



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF, LRE, MNDC OLC, PSF, RP, RR

Introduction

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

- a. An order that the landlord make emergency repairs or repairs for health or safety reasons
- b. A monetary order in the sum of \$19,520.32
- c. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- d. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- e. An order to recover the cost of the filing fee?

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 was served on the Landlord by mailing, by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are is entitled to an order for repairs and/or emergency repairs?
- b. Whether the tenants are entitled to a monetary order and if so how much?
- c. Whether the tenants are entitled to an order that the landlord provide services or facilities required by the tenancy agreement or by law?

- d. Whether the tenants are entitled to an order for the reduction of rent for repairs, services or facilities agreed upon but not provided?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

On November 24, 2012 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on December 15, 2012, continue for one year and become month to month after that. The rent was \$3200 payable on the 15th day of each month. The tenants paid a security deposit of \$1600 on December 1, 2012. The present rent is \$3365.24.

The tenants claim for repairs and for compensation for the reduced value of the tenancy.

The rental property has been sold and is scheduled for demolition. The tenants have been served with a 2 month Notice to End Tenancy that set the end of tenancy for August 15, 2016. The tenants state they do not intend to dispute that Notice to End Tenancy and they will be vacating the rental unit at the time.

The Law:

Section 32(1) 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.

Policy Guideline #16 includes the following:

Claims for Breach of Contract

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for dispute resolution for an order that the other party comply with the tenancy agreement or the Act⁵ that governs the agreement. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Section 7 of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Application for a Repair Order

The Application for Dispute Resolution filed by the tenants on May 25, 2016 seeks the following repair orders:

- Fix the furnace
- Fix the leaks
- Fix the inside damage from the leaks (peeling paint, damaged drywall, mould)

The tenants presented evidence in the form of photos, digital videos and oral testimony. The landlord produced the copy of a contract in which the contractor agreed to complete this work not to exceed \$4300 by June 24, 2016. The tenants testified the contractor has started the work but has not completed all of the work.

I dismissed the claim for a repair order for the following reasons:

- Repair work has been done since the tenants filed their application and the evidence is not sufficiently recent to determine whether all of the issues have been dealt with.
- I determined the furnace has been fixed.
- The tenancy is coming to an end. The rental unit is going to be demolished. I determined that work has been undertaken to fix the leaks to the roof. Areas of the roof have been covered by a tarp. Given the time of the year I determined that it is not reasonable to order that the landlord incur the expense of replacing the roof as the rental unit is to be demolished..
- I determined the more appropriate way of dealing with this is to recognize that for the next 7 weeks the tenant may face leak problems (as they have experienced in the last couple of years) and they should be compensated for this.

Monetary Order:

Both sides acknowledge there have been problems with leaking and other repair issues. The issue is assessing whether the tenants sufficiently advised the landlord of the problems, the extent to which their enjoyment of the rental unit has been reduced and whether the tenants have acted reasonably in mitigating their loss.

The tenants rely on the following evidence:

- On January 12, 2014 the tenants e-mailed the landlord advising the landlord of a large sink hole in the front yard, a leak in the ceiling of the master bedroom and asking that the landlord attend.
- On August 12, 2014 the tenants e-mailed the landlord advising that siding has come loose and that there has been water damage in several spots on the east top floor bedroom/bathroom ceilings and requesting that someone attend ASAP.

- On October 17, 2014 the tenants e-mailed the landlord saying there was more leaks on the top floor above the roof deck door and coming down the inside of the walls.
- On July 12, 2015 the tenants emailed the landlord stating "More water ingress from the rain last night. Last year this was from clogged drains, can you arranged to have them cleared again."
- On February 29, 2016 the tenants emailed the landlord advising that they continue to have water coming into the upstairs room during heavy rain (as previously mentioned Feb. 2015). The email also states "...I'm requesting you waive the notice of rent increase you have just sent us. In addition, I'd like you to consider this a second formal request to have the leaks in the roof repaired as soon as possible..."
- The furnace was not working for 9 days at the end of May 2016. The furnace is the primary source of heat for the rental unit.
- The tenants produced photos and digital evidence of the water damage to the walls and ceilings.
- The tenants relied on a City of Vancouver bylaw but failed to provide a copy of it.
- The tenants have exclusive possession of the roof deck. They use it especially during the summer months. It is in poor shape since October 2014.
- The tenants testified they did not file an Application for Dispute Resolution until the end of May 2016 because they expected the landlord would act in good faith towards them and they hoped the landlord would make the appropriate repairs.

The landlord produced the following evidence:

- The landlord responded to the tenant's concerns in their email of January 12, 2014 by hiring Hunter Roofing who undertook an inspection and performed necessary repair work. He produced an invoice dated February 7, 2014 to support this testimony.
- The landlord responded to the Tenants complain in the email of August 15, 2014 by retaining Hunter Roofing to perform the necessary work as evidenced from their invoice dated September 3, 2014.
- The landlord responded to the Tenants concerns in the email of October 17, 2014 by hiring Plain and Simple Painting to install a downspout, unplug leaves and install a leaf guard as evidenced by their invoice of January 15, 2015.
- The landlord responded to the tenants complaints made February 5, 2015 by retaining Plain and Simple Painting to replace fallen siding and to repair damaged ceilings and walls as evidenced from their invoice dated March 6, 2015.

- The landlord responded to the Tenants' concerns of July 12, 2015 by employing North Shore Drainage to clean the gutters.
- The landlord responded to the Tenants concerns of February 29, 2016 by retaining Hunter Roofing to perform the necessary work as evidence by their invoice dated April 6, 2016.
- On May 18, 2016 the leaking furnace was discovered upon a buyer's inspection and the gas to the rental unit was turned off. The landlord hired Hillcrest Plumbing and Heating who completed the repair work as soon as reasonably possible as evidence by their e-mail dated May 27, 2016.
- The landlord retained a contractor on June 8, 2016 to repair damages to the rental property caused by water ingress.
- On inspection of the rental property on June 2, 2016 the landlord observed the Tenants were making full use of the rental property.

After carefully considering all of the evidence I made the following determinations:

- I accept the testimony of the parties that the residential property has experienced problems with leaks over the period of the tenancy.
- I determined that the tenants' use of the rental property has been reduced because of the leaks. In particular I find that the tenant's use of a bedroom and bathroom has been reduced.
- However, this is not a situation where the tenants have not used those rooms.
- The tenants acknowledged they used the bedroom and bathroom during this period.
- I have considered the testimony of the tenants and the photographs that indicate there was water stains on the walls and ceilings. . .
- The tenants submits they should be compensated on the basis of the difference in market value between a 1 and 2 full bathroom unit plus a credit for their use of the second bathroom and loss of use of 1 or 2 bedrooms plus a credit for their use of the second bedroom. I do not accept this is the appropriate way to calculate the reduced value of the tenancy for the falling reasons:
 - The tenants failed to provide the evidence which is the basis of this calculation.
 - I do not accept the tenants' testimony that they lost the use of the half of the bedroom and half of the bathroom for the full 20 months claimed. I determined that for much of the time they did not experience a problem with leaks and their enjoyment was not reduced.
 - This method of calculation fails to consider the legal obligation on the Tenant to sufficiently advise the landlord the problems were persisting.

- This method of calculation fails to sufficiently consider the tenants' obligation to mitigate their loss.
- I am satisfied based on the landlord responded to the tenant's complaints in a timely manner. The invoices and receipts presented indicate that the landlord hired a contractor to complete the repairs within a reasonable time after receiving notice from the tenants.
- I determined the notices the tenants gave to the landlord was insufficient to put the landlord on notice that the tenants were reserving the right to claim for a monetary order for the reduced value of the tenancy or that the problems were persisting.. The tenants complained of water problems. The landlord hired a contractor to inspect and complete the necessary work. The tenants did not follow up with complaints until another event happened. It is reasonable to infer that the tenants' enjoyment of the rental property was not reduced after the repairs were completed. It is certainly reasonable for the landlord to assume the problem has been resolved when the contractor has completed the work unless the tenant advises the landlord to the contrary.
- I determined the tenants failed to mitigate their loss. If the problems were persistent and ongoing I determined that it was appropriate to the tenants to be more active advising the landlord and if the landlord failed to respond, by filing an Application for Dispute Resolution in a timely manner.

With regard to each of the Tenants' claims I find as follows:

- a. The tenants claimed the sum of \$8176 for the loss of use of one of two bedrooms for 20 months. I do not accept the tenants' method of calculation. I find that the tenant used the bedroom for the full 20 months although the enjoyment was reduced. The initial rent was \$3200 per month. I determined the tenants are entitled to compensation in the sum of \$200 for the reduced value of the tenancy. However, I find that the tenants failed to sufficiently advise the landlord that the problems were persisting. The tenants failed to file an Application for Dispute Resolution in a timely manner. I determined their claim is limited to 9 months @ \$200 per month for a total of \$1800.
- b. The tenants claimed \$8176 for the loss of a bathroom for 20 months. I do not accept the tenants' method of calculation is appropriate. The tenants continued to use the bathroom. I find the reduced value of the tenancy to compensate for the leaks in the bathroom is \$150 a month. However, I find that the tenants failed to advise the landlord and failed to mitigate by filing an Application for Dispute Resolution in a timely manner. I determined the

reduced value of the tenancy for the times they could not use the bathroom is 9 months \$150 per month or the sum of \$1350.

- c. The tenants claimed the sum of \$1306.13 loss of use of the deck for 20 months. I determined the tenants would not normally use the roof deck in the winter period. I determined the sum of \$600 is the appropriate compensation for the loss of use of the roof deck.
- d. The tenants claimed \$967 for the loss of use of the furnace for 9 days. The tenants calculated that this by the daily rent multiplied by the 9 days. I determine this claim is excessive and not supported by the evidence. The time in question is the last part of May. The tenants had access or could have purchased space heaters. I determined fair compensation for this loss is \$300 for the 9 days.
- e. The tenants claimed \$1000 for ongoing cleaning, emptying of bowels and drying. The tenants failed to present specific evidence as to what work they did and when they did it. I determined compensation in the sum of \$300 is sufficient compensation for this claim

In summary I determined the Tenants have established a claim against the landlord in the sum of \$4350.

Reduction of Rent

I dismissed the tenants' application for a repair order as I determined it was not appropriate to make such an order in these circumstances where the cost to replace the roof is excessive and where the tenancy is coming to an end in the next 7 weeks. However, the tenant's enjoyment of the rental property will be affected by the lack of complete repairs to the roof. I determined the tenants are entitled to compensation in the sum of \$600 for the reduced value of the tenancy from June 24, 2016 to August 15, 2016. I recognize it is unusual to make such an order. However, the landlord will not be replacing the roof and the tenants will be vulnerable to disruption if it rains. . I determined it is appropriate given the nature of the Residential Tenancy process to provide hearings in a timely manner.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$4950 plus the sum of \$100 in respect of the filing fee for a total of \$5050.

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: June 24, 2016

Residential Tenancy Branch