



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, RP, RR, FF, MT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for more time to apply to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy - Section 49;
3. A Monetary Order for compensation - Section 67;
4. An Order for repairs to the unit - Section 32;
5. An Order for a rent reduction - Section 65;
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness gave evidence under oath of the service of the Tenants’ application for dispute resolution on the Landlord.

Issue(s) to be Decided

Is the notice to end tenancy effective?

Is the Landlord required to make repairs to the unit?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Rent of \$950.00 is payable on the first day of each month.

The Landlord states that on April 12, 2016 the Tenant was given, in person, a two month notice to end tenancy for landlord’s use (the “Notice”). The Landlord states that he gave both pages of

the Notice to the Tenant but cannot say what the reason says on the Notice as he does not have a copy of the Notice in front of him. The Landlord states that the reason for the Notice is that his son is moving into the unit. The Tenant states that they only received the first page of the Notice and that they asked the Landlord about the second page but he did not give them one. The Tenants seek a cancellation of the Notice and also claim \$950.00 in compensation for having to move.

The Tenants states that the kitchen sink has had a leak since November 2015 and that although the Landlord was informed of the leak, no repairs have been made. The Landlord states that a plumber attended the unit in January or February 2016 to repair the leak. The Landlord states that he will attend the unit immediately after the hearing to inspect the unit for a leak.

The Tenant states that 2 elements on the stove do not work and have not worked since April or May 2015. The Tenant states that the Landlord was informed and that the Landlord agreed to replace the stove but has not done so. The Tenant states that the stove is very old. The Tenants provided a photo of the stove. The Landlord states that he does not know the age of the stove. The Landlord states that the Tenant does not need all 4 elements as the Tenant can use the two that work. The Landlord agrees to repair or replace the stove no later than June 19, 2016.

The Tenant states that on June 28, 2015 a tree fell on the roof of the unit and that they had to move out of the unit for safety reasons for three weeks. The Tenants state that the Landlord did not remove the tree for two or three months and that they intermittently lost electricity and use of the interest. The Tenants state that a branch of the tree also hit their car the day after the tree fell on the unit but this was taken care of through an ICBC claim. The Tenants state that large branches and tree parts remain in the back of the unit and have not yet been cleaned up. The Tenants want the Landlord to clean up the tree and the Tenants seek compensation in relation to the falling tree. The Landlord states that the tree was removed within 2 weeks and was not dangerous. The Landlord cannot recall who removed the tree. The Landlord agrees to remove the trees but cannot agree to a timeline.

The Tenant states that the hot water tank broke during the winter and flooded the basement. The Tenant states that the Landlord replaced the tank in a week but did not fix the pump for a

further 3 weeks. The Tenants state that they lost use of hot water for 3 weeks. The Landlord states that the work on the water tank was all done in two weeks.

The Tenant states that after the tree was removed the Landlord did not repair the roof and only covered it with tarp. The Tenant states that the roof started to leak, continues to leak and that mold is now growing on the ceiling of the living room and bathroom. The Tenant states that it is cold and moist in the unit. The Tenants state that the Landlord has been repeatedly informed but has done nothing. The Landlord states that the roof was fixed and that the Tenants never informed the Landlord about a leak or mold. The Landlord states that he will inspect for mold immediately and will clean the mold. The Landlord states that the repairs for the roof are still under warranty and he will call the company to return immediately for repairs.

The Tenant states that the deck is in bad shape and that one of the Tenants recently fell through a hole in the deck. The Tenants seek repairs to the deck and provided photos. The Landlord states that he will inspect the deck immediately and make repairs by June 30, 2015.

The Tenants claim a global amount of \$2,850.00 calculated as the equivalent of three month's rent.

Analysis

Section 52 of the Act provides that in order to be effective a notice to end tenancy given by the Landlord must be on the approved form and must state the reason for the Notice. Given that the Landlord did not provide any copy of the Notice and considering the persuasive evidence of the Tenants I find on a balance of probabilities that the Landlord only gave the Tenants the first page of the Notice and that no reason for the Notice was therefore provided on the approved form. As a result I find that the Notice is not effective. As the Notice is not effective in ending the tenancy I find that the tenancy continues. As the Notice is not effective no cancellation is required and the matter of the time limit to apply to cancel the Notice is not relevant. As the tenancy continues, I dismiss the Tenant's claim for moving compensation.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 32 of the Act provides that a landlord must provide and maintain residential property in

a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Accepting the Tenant's undisputed evidence that a leak existed from the kitchen sink as early as November 2016 and considering the Landlord's vague evidence of its repair, I find that I prefer the Tenant's evidence that the leak still exists and that no repairs have been made. I find therefore that the Tenants have substantiated that the Landlord failed to maintain the unit and are entitled to compensation for the inconvenience of a leak in the amount of **\$350.00** (\$50.00 per month for 7 months) for the period December 2015 to and including June 2016. I accept the Landlord's agreement to inspect the leak and if required I order the Landlord to make repairs as soon as possible and no later than a week following the inspection. Should the Landlord fail to inspect the leak and make repairs if required, I find that the Tenants are entitled to a rent reduction of **\$50.00** per month as of July 1, 2016 and for each month thereafter or portion thereof that the leak is not repaired.

Based on the undisputed evidence that the Tenants have been without the full use of the stove for at least one year I find that the Tenants have substantiated that the Landlord failed to provide a stove included under the tenancy agreement and that the Tenants are entitled to compensation of **\$600.00**, calculated as \$50.00 per month for 12 months. Should the Landlord fail to repair or replace the stove I find that the Tenants are entitled to a rent reduction of **\$50.00** per month as of July 1, 2016 and for each month thereafter or portion thereof that the Landlord fails to act.

Based on the undisputed evidence that a tree fell on the unit and given the photos of the tree I find that the Tenants have substantiated that they lost use of the unit and electricity for a period of time. Given the Landlord's vague evidence of the tree removal I find that I prefer the Tenant's evidence that the tree remained on the unit for longer than a few weeks. As there was no evidence of any loss beyond that of inability to stay in the unit and some loss of electricity, I find that the Tenants have only substantiated that the Landlord failed to act within a reasonable time to repair and remove the entire tree and that the Tenants are entitled to nominal compensation of **\$200.00**.

Although the Landlord agreed to remove the remaining tree parts, given his inability to provide a time frame for this removal and considering the amount of time that has already passed I order the Landlord to remove the remaining tree parts from the yard no later than June 18, 2016.

Should the Landlord fail to remove the tree as ordered I find that the Tenants are entitled to a rent reduction of **\$50.00** per month as of July 1, 2016 and for each month thereafter or portion thereof that the tree is not removed.

Based on the evidence that the water tank and flood was not repaired for at least two weeks and considering this to be an unreasonable amount of time to wait for hot water causing extreme inconvenience I find that the Tenants have substantiated that the Landlord was negligent in making repairs to the hot water tank and that the Tenants are therefore entitled to compensation for the loss of hot water in the nominal amount of **\$100.00**.

Overall I find the Landlord's evidence to be vague and his approach to his obligations to be nonchalant at the mildest. I cannot accept that the Landlord did not know that the roof was causing problems and I accept that the unit has been cold and damp for some time. Given the photos of the deck I also have a difficult time accepting that the Landlord was not aware of the shape of the deck, which appears aged and in bad shape. However I accept the Landlord's word that he will repair the roof, mold and deck as soon as possible. As such I find that the Tenants are only entitled to a nominal compensation of **\$200.00** for the leakage and cold dampness in the unit to present. Accepting that the Landlord was only just asked to repair the deck I decline to grant any damages to the Tenant in relation to the deck. Should the Landlord fail to repair the roof, mold and deck as agreed, and as these are more significant repairs that may carry greater consequences that the repairs above should they not be completed, the Tenants have leave to reapply for compensation in relation to these repairs.

As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the \$100.00 filing fee for a total amount of **\$1,550.00**. While I provide a monetary order to the Tenants for this amount, the Tenants may satisfy this amount by deducting it from future rent payable.

Conclusion

The Notice is of no effect and is null and void. I grant the Tenants an order under Section 67 of the Act for **\$1,550.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

At the time of the hearing the Landlord agreed to and was given dates to complete repairs as recorded above.

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 17, 2016

Residential Tenancy Branch