



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, MNDC, RR, FF

Introduction

This hearing dealt with a tenant's application for: repair orders; emergency repair orders; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization to reduce rent payable for repairs not made. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

Two persons were identified as tenants in the filing of this application; however, only one of the named applicants appeared at the hearing. The landlord pointed out that the person appearing at the hearing is not named as a tenant on the tenancy agreement. The applicant appearing before me explained that she is the tenant's daughter; that she has resided with her mother in the rental unit for several years; but, she also acknowledged that she was not a tenant named on the tenancy agreement and had not signed the tenancy agreement. The tenant's daughter also stated that she has resided in the rental unit with the knowledge of the building managers at the time. I informed the applicant appearing before me that in order to be a named tenant to this dispute she must have standing as a tenant. The applicant confirmed that she has filed this application with knowledge and on behalf of her mother. The landlord, who has been the property manager since December 9, 2015, acknowledged that she has no knowledge of events that occurred prior to December 2015. With consent, I amended the application to exclude the tenant's daughter as a named party to this dispute and I proceeded on the basis the tenant's daughter is acting as an agent on behalf of her mother. Accordingly, the tenant's daughter is hereafter referred to as the tenant's agent.

The tenant's agent indicated that she had tried to name the owner of the property in filing this application since portions of this dispute pertain to events that began prior to

the current property manager taking over management of the property; however, she claims that she was not permitted to name the owner. I confirmed that the landlord named on the application is the property manager company hired by the owner of the property and has been the property manager since December 9, 2015. The definition of landlord under section 1 of the Act includes an owner of a property and an agent who acts on behalf of the owner with respect to tenancy agreements. Accordingly, reference to landlord in this decision may pertain to the property manager and the owner. Since the property manager is named as the landlord in this decision it remains upon the property manager to share any findings or orders with the owner as appropriate as necessary and failure to do so is of no consequence to the tenant.

The landlord pointed out that the tenant's documentary evidence was served after the deadline required under the Rules of Procedure. The tenant's agent explained that she had difficulty retrieving and printing the evidence which consists of electronic communication. The landlord stated that she has had an opportunity to review the evidence, despite its late arrival, and did not object to its inclusion and consideration in making this decision. Accordingly, the tenant's documentary evidence was accepted and considered to in making this decision.

Issue(s) to be Decided

1. Is it necessary and appropriate to issue repair orders to the landlord?
2. Is the tenant entitled to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is the tenant entitled to reduce future rent payable for repairs not made?

Background and Evidence

The tenancy commenced in May 2002 and the tenant is currently required to pay rent of \$973.00 every month. The rental unit is a one-bedroom apartment in an older 22 unit building.

With respect to repair orders, the tenant's agent submitted that there were two main issues when the application was filed: 1) a very noisy fridge and 2) severe temperature fluctuations while showering. Both of the above issues were communicated to the building manager and property manager in place at the relevant time, orally, and in writing, and to the property manager by way of email.

As for the fridge, I heard that a new fridge has been provided to the tenant. The tenant's agent stated that it was provided May 13, 2016 which is also the same day the

tenant's Application for Dispute Resolution was served upon the landlord. The landlord stated that according to their records it was delivered on May 12, 2016. Regardless, this repair issue is resolved at the time of this hearing and it is unnecessary to issue a repair order with respect to the fridge.

As for the fluctuating water temperature, the tenant's agent described how the water temperature will fluctuate between scorching hot and very cold, very quickly, while showering and that this issue remains outstanding. The tenant's agent suggested that a possible cause to these temperature fluctuations may be attributable to dishwashers in other units.

The landlord acknowledged that they are aware that a number of units in the building are experiencing water temperature fluctuations. I heard that the building manager has inspected all of the units in the building recently and determined that there are no dishwashers in other units. The landlord submitted that shortly after taking over management of the property the landlord had a plumber inspect the building. The landlord submitted that it was the plumber's opinion that to resolve the fluctuating water temperature issue the boiler system requires replacement and re-piping. The landlord submitted that this is a large project to undertake and that it would require the owner's involvement and approval to proceed. The landlord indicated that the owner is aware of the complaints and the plumber's opinion as to how to resolve the issue. The owner has not given the property manager approval or otherwise instructed the property manager to commence such a project.

With respect to monetary compensation, the tenant applied for compensation equivalent to 10% of the monthly rent, or \$95.00 per month, for the period of October 2015 through May 2016. I heard that this request pertains to the very noisy fridge that resulted in numerous sleepless nights. Although the tenant's agent submitted that the fridge had been noisy for approximately one year, it was in October 2015 that the building manager was provided a link to a video of the very noisy fridge in action. The tenant's agent submitted that after sending the video to the building manager, a number of subsequent communications were made with the building manager concerning the issue. Since it took until May 2016 to get this issue resolved the tenant seeks compensation for this period of time.

The property manager was of the position that the landlord should not be held responsible for the period of time that pre-dates the current property manager taking over management of the property on December 9, 2015. The property manager stated that they were unaware of the pre-existing complaint to the former property manager. When the current property manager became aware of the issue they sent a technician

to the unit to determine the appropriate remedy. The landlord stated that it was determined that the cost to repair the fridge would be no less than the cost to replace the fridge so a repair was not undertaken. After that the building manager offered the tenant a different fridge from another unit but the tenant declined the offer and wanted a new fridge. The property manager also submitted that the fridge remained functional by keeping food cold.

The tenant's agent responded by stating that it was assumed that communication and repair issues the former property manager was aware of should have been passed along to the current property manager. In any event, the tenant continued to make repeated requests for action to the current building manager and property manager and months passed before the issue was resolved. The tenant's agent acknowledged that the building manager had offered to bring a different fridge from a different unit but that the building manager indicated that it was unknown as to whether it would be noisy as well. According to the tenant's agent the building manager told the tenant's agent to text him, which the tenant's agent did, and the building manager did not respond to her text.

As for the tenant's request for a reduction of future rent payable, the tenant's agent explained that this request was made in the event the fridge did not get replaced; however, it was replaced in May 2016. Accordingly, the tenant wished to withdraw this request.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Under section 32 of the Act, a landlord is required to repair and maintain the property 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.

It is undisputed that the primary outstanding repair issue at this time pertains to the severe fluctuation in water temperature that is especially problematic while showering.

Since the rental unit is equipped with a shower I find it reasonable that the tenant would expect the shower to be useable and enjoyable as it was intended. While I was not provided specific evidence that the fluctuating water temperature violates a particular health, safety or housing standard required by law I find it reasonably likely that experiencing scorching hot temperatures while showering is a health and safety concern that should be addressed so that the rental unit equipped with a shower is suitable for occupation. Therefore, I am satisfied that the landlord is in violation of the requirement to repair and maintain the property under section 32 of the Act.

In light of the above, I make the following order to the landlord:

I ORDER the landlord to make the necessary repairs to the rental unit and/or residential property so that the water temperature does not unreasonably fluctuate while showering. The deadline for accomplishing this repair is July 31, 2016. If the landlord fails to comply with this repair order the tenant is at liberty to file an Application for Dispute Resolution to seek monetary compensation from the landlord and authorization to reduce future rent payable. The landlord is also put on notice that failure to comply with repair orders issued by the Director may subject the landlord to administrative penalties.

As for the tenant's request for monetary compensation for the noisy fridge, I accept the undisputed evidence before me that the noise resulted in numerous nights of disturbed sleep, I find the tenant is entitled to compensation due to an unreasonable delay in rectifying this matter on part of the landlord. I make this finding as I am satisfied that the tenant, or the tenant's agent, put the landlord's agent on notice in October 2015 that the fridge was exceptionally noisy and disturbing and that it took until May 2016 for the issue to be resolved. I am also satisfied that the tenant, or tenant's agent was diligent in following up with the various agents for the landlord and received unsatisfactory results. Where a tenant is in need of a repair it is expected that the tenant will notify the landlord of the issue and the landlord is afforded a reasonable amount of time to take appropriate action. I find the passage of seven months' time to be unreasonable. Therefore, I grant the tenant's request for compensation for the period of October 2016 through May 2016 in the sum of \$760.00 as requested.

While I appreciate the current property manager did not commence management duties until December 9, 2015 the tenant should not suffer the consequences of the owner's choice in property managers or the owner's decision to change property managers. As

such, the consequences of not keeping accurate records or passing along the records to the new property manager are issues between the owner and the owner's property managers. Accordingly, I reject the landlord's argument that compensation should not be payable for the period of time that pre-dates the start of the current property manager's contract with the owner. Any liability attributable to the period that pre-dates the current property manager's contract with the owner is an issue between the property manager and the owner.

Since the tenant's application was largely successful, I further award the tenant recovery of the \$100.00 filing fee paid for this application.

By way of this decision the tenant has been awarded compensation totalling \$860.00. I provide the tenant with a Monetary Order in this amount. I also authorized the tenant to deduct this amount from rent otherwise payable to the landlord in satisfaction of the Monetary Order.

Conclusion

The landlord has been ordered to make repairs with respect to the fluctuating water temperature by July 31, 2016. Should the landlord fail to comply with this order the tenant is at liberty to file another Application for Dispute Resolution to seek monetary compensation and authorization to reduce future rent payable. The landlord may also be subject to administrative penalties.

The tenant has been awarded compensation totalling \$860.00. The tenant has been provided a Monetary Order in this amount. The tenant has been authorized to deduct this amount from rent otherwise payable in satisfaction of the Monetary Order.

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