



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, OLC, ERP, RP, RR, O

For the landlord – MNDC, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement, for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; for an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and for other issues. The landlord applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for other issues.

The tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing; however, the tenant testified he did not receive the landlords' evidence package for this hearing. The landlord testified that he may have sent his evidence as part of the evidence for a hearing to be held later in the year. In considering Rule 3.14, the landlord as an applicant, must submit their evidence so that it is received by the other party not less than 14 days prior to the hearing, and in this case there is insufficient evidence that the landlords served their evidence for this

application upon the tenant. I have therefore not considered the landlord's documentary evidence but have considered his oral testimony. 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.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to an Order for the landlord to make emergency repairs?
- Is the tenant entitled to an Order for the landlord to make repairs?
- Is the tenant entitled to an Order to allow the tenant to reduce his rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on April 1st, 2016 for a one year fixed term. Rent for this unit is \$980.00 per month due on the first of each month. The tenant paid a security deposit of \$490.00 at the start of the tenancy. The parties also agree that the landlord did not do a move in condition inspection report.

The tenant's application

The tenant testified that his and his son's clothing has been damaged by the washer and or dryer in the unit. The tenant testified that their soccer jerseys have been burnt, the letters and numbers are peeling off and there are small holes in these and 10 other shirts. The tenant testified that two pairs of his expensive jeans have also been ripped in

the washer or dryer. The tenant testified that he washes their clothes on either a cold or warm temperature and uses a low heat setting on the dryer. The tenant does not know what is causing the damage but his clothes are damaged when they come out of the machines. The tenant testified that he has only been able to estimate the replacement costs for this clothing as follows:

Two pairs of jeans at \$600.00 each = \$1,200.00

Six soccer jerseys at \$200.00 to \$300.00 each = \$1,200.00 or \$1,800.00.

Ten shirts – at \$100.00 each = \$1,000.00.

The tenant seeks to recover the costs to replace this clothing from the landlord as the landlord was notified about this damage caused by the machines but has not sent anyone to look at the washer or dryer to determine what is causing the damage. The tenant referred to some photographic evidence showing some damaged clothing.

The tenant testified that he wrote to the landlord requesting the landlord rectify many issues in the unit and with neighbouring tenants. The tenant testified that the landlord has failed to remedy the tenant's complaints since the letter was emailed to the landlord and hand delivered on May 31, 2016.

The tenant seeks an Order for the landlord to comply with the *Act*, regulations and tenancy agreement for the following issues:

The tenants directly next to the tenant's unit have been smoking inside their unit and this second hand smoke comes into the tenant's unit and affects the health of the tenant and his young son. The tenancy agreement states no smoking inside or on the property yet these other tenants are smoking both inside their unit and outside the unit. The landlord informed the tenant that he had spoken to these other tenants but as they said they don't smoke inside their unit there was nothing the landlord could do. These tenants also come home late at night on the weekend and play loud music and hold loud conversations which disturb the tenant and his young son.

When the tenant moved into the unit there was black mould in the unit. The tenant managed to clean most of this off but there remains black mould in the shower and on some of the landlord's furniture used by the tenant.

There are no working lights on the stairs or by the tenant's door. This is dangerous when the tenant and his son come home when it is dark. Inside the unit there are also burnt out light bulbs which the tenant is unable to replace as he cannot get the old bulbs out.

There is only one garbage can for three units. This is insufficient and the tenant has to store garbage in his unit when there is no room left in the garbage cans.

The tenant seeks an Order for the landlord to rectify these issues and to comply with the *Act* and ensure the unit is maintained, to ensure there is sufficient access to garbage cans and ensure the neighbouring tenants are dealt with under the *Act* about smoking and causing disturbances to the tenant.

The tenant seeks an Order for the landlord to make emergency repairs to the electrics in order to ensure the outside lights are working and that the inside light fixtures can have the old bulbs removed.

The tenant seeks an Order for the landlord to make repairs to the unit in order to rectify the mould issue in the shower, to have someone in to assess the washer and dryer to determine what is causing damage to the tenant's clothes.

The tenant testified that when he moved into the unit the unit was furnished. The tenant agreed to keep the landlord's furniture in the unit for his own use but there was also a great deal of food items left in the kitchen cupboards and fridge which the tenant had to remove and there is a pile of the landlords or the previous tenant's personal belongings which need to be removed. Some of the landlord's furniture in the unit is also suffering

from mould. The tenant seeks an Order to have this furniture cleaned to remove the mould.

The tenant seeks a rent reduction from April 01, 2016 as the landlord has not remedied these issues since the tenant informed the landlord in writing on May 31, 2016. In that letter the tenant gave the landlord 30 days to rectify the issues in the unit and with the neighbouring tenants but to date the landlord has failed to take any action. The tenant seeks a rent reduction of 30 percent a month from April, 2016 until such a time that the landlord remedies these issues listed above.

The landlord agreed that he has not been in the unit to see the tenant's issues and has not sent any repair men in to look at the tenant's issues with the washer and dryer and mould. The landlord testified that on May 09, 2016 he got a text message from the tenant about a problem with the washer and dryer but the tenant refused access until May 12, 2016. At that time the tenant only showed the landlord one tee-shirt with a pencil end sized hole in it. The landlord suggested to the tenant that he needed to clean the washer and dryer filter and not to overload the machines. The landlord testified that he asked the tenant if anything else was damaged and he said no. the tenant never made mention of any burnt clothing. The landlord testified that he looked at the machines and everything appeared to be OK. The previous tenant had not mentioned any issues with either of the machines. The landlord disputed that he received a letter from the tenant by email or in person on May 31, 2016.

The landlord testified that when the tenant complained about the other tenants' smoking, he had complained two or three times. The landlord went to speak to the other tenants and they denied smoking inside. They have a chair and an ash tray set up away from the doors outside and said this is where they smoke. The landlord testified that he went into their unit and there was no evidence that they smoked inside their unit.

The landlord testified that he is not aware of any black mould in the unit. The tenant keeps complaining since he moved in. the landlord agreed he has not been in the unit to look for mould.

The landlord testified that he had an electrician out to repair the outdoor motion lights and these are now working on the stairs and other outside areas. The landlord agreed that the small light above the tenant's door is not working. The tenant is also an electrician and had promised to help the landlord find out what the problem is but he has not done so. The landlord testified that when the tenant moved in all the lights inside were working. On April 17, 2016 the tenant complained that some lights were not working so the landlord purchased some bulbs and left these outside the tenant's unit. The landlord agreed he had not been inside the tenant's unit to determine why the old bulbs cannot be removed.

The landlord testified that there is one garbage can and one recycling can for two units. The landlord testified that he will arrange for another can for the tenant.

The landlord testified that with regards to the emergency repairs, he will send someone in to look at the lights as required.

The landlord testified that he rented the unit furnished with three cabinets, a bed a sofa and a microwave. The landlord disputed that he left any personal belongings of his or the previous tenant in the unit and there was no food left in the kitchen cupboards or fridge. The landlord agreed that the tenant complained that the furniture needing cleaning after a month of moving in. the landlord agreed he has not been to look at the furniture but testified he did tell the tenant he could move out if he was not satisfied.

The landlord's application

The landlord testified that the tenant has disturbed the landlord's right to quiet enjoyment of his home. The tenant broke the landlord's family peace and the landlord's children could not have a quiet space to study. The landlord's wife even left home to get

a quiet place to stay. The landlord's family members are living under mental treat every day. This has caused serious health troubles for the landlord. He cannot concentrate during the day and cannot sleep at night and needs to take a sleeping pill. The landlord seeks to recover \$8,000.00 in compensation from the tenant.

The tenant disputed that he causes any noise that would disturb the landlord or his family. The noise comes from the other tenants who come in from the pub or nightclubs late at night. The tenant testified that the landlord is trying to blame him for the loud noise but it is the other tenants who are loud and obnoxious.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenant's application

With regard to the tenant's claim for compensation for damage to his clothes of \$3,500.00; In this matter the tenants has the burden of proof to show that this damage was caused by the washer or dryer in the normal use of washing or drying clothes, the tenant must also show the age of the damaged items and the actual replacement costs. It is insufficient for the tenant to claim these clothes were damaged by these appliances without proof that this damage was not pre-existing or that the clothes were not damaged through normal wear and tear or by some other force. Further to this I am not persuaded that the replacement costs for this clothing would amount to \$3,500.00 as the tenant has provided insufficient evidence to support this. Consequently, I must find the tenant has not met the burden of proof in this matter and the tenant's claim for compensation is therefore dismissed without leave to reapply.

With regard to the tenant's application for the landlord to comply with the Act; I refer the parties to s. 32 of the *Act* which states:

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.

I am satisfied from the evidence before me that there are some deficiencies in the unit which require some investigation by the landlord. I therefore Order the landlord to comply with s. 32 (1) of the Act and have the washer and dryer inspected to ensure it is functioning correctly, to investigate and remediate any black mould in the unit including on the furniture provided to the tenant in the unit; to investigate and remediate the electrical issues with the lighting both inside and outside the unit and to ensure there are sufficient garbage cans for each unit.

Furthermore, I find despite complaints made by the tenant regarding the other tenants smoking the landlord has done little to investigate this issue or to ensure the tenant is not disturbed by other tenants. I therefore Order the landlord to comply with s. 28 of the Act regarding the protection of the tenant's right to quiet enjoyment of his rental unit and to conduct a thorough investigation of whether or not the other tenants are smoking inside their unit or disturbing the tenant late at night.

With regard to the tenant's application for an Order for the landlord to make emergency repairs and to make repairs, as I have dealt with these concerns above, then no further Orders are necessary.

With regard to the tenant's application concerning the removal of the landlord's personal belongings from the unit; I am satisfied that this unit was rented partially furnished with three cabinets, a bed, a sofa and a microwave. I Order the landlord to arrange a mutually convenient time to meet with the tenant at the unit to determine what other

belongings were left in the unit from either the landlord or the previous tenant and to deal with these accordingly to ensure the tenant has sole use of his unit without the personal possessions of another occupant taking up space.

With regard to the tenant's application for a rent reduction; the tenant notified the landlord in writing on May 31, 2016 of these issues. Despite the landlord's claim that he did not receive this letter I find on a balance of probabilities that the landlord was provided a copy of this letter by email and in person. The tenant gave the landlord 30 days to remedy the issues in the unit and the landlord failed to do so. I find therefore the tenant is entitled to compensation in the form of a retroactive rent reduction from June 01, 2016 of \$200.00 per month for June, July and August to an amount of \$600.00.

I further find as the landlord has still not carried out any investigation to determine what repairs are required in the rental unit that this rent reduction will continue until such a time as the landlord has completed his investigations and remediated any repair issues required. The landlord must use a certified contractor to carry out any investigations and to remediate any work required. The landlord must then show the tenant any report from that contractor to show that no further work is required or that any work necessary has been completed.

The landlord's application

The landlord seeks to recover compensation from the tenant for a loss of quiet enjoyment for the landlord and his family. I refer the parties to the Residential Tenancy Policy Guidelines #6 which states, in part, that "at common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from

serious interferences with his or her tenancy.”¹ A landlord does not have a reciprocal right to quiet enjoyment.”

If the landlord feels the tenant has significantly interfered with or unreasonable disturbed the landlord or another occupant the landlord is at liberty to serve the tenant, or any other tenants, with a One Month Notice to End Tenancy for cause and then provide sufficient evidence to meet the burden of proof as to any interference or disturbances that occur. As the landlord does not have a reciprocal right to quiet enjoyment I must dismiss the landlord’s application without leave to reapply.

Conclusion

I HEREBY FIND in partial favor of the tenant’s monetary claim. A copy of the tenant’s decision will be accompanied by a Monetary Order for **\$600.00** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The tenant has a further option of reducing their next rent payment by the amount indicated above pursuant to s. 72(2)(a) of the *Act*.

I Order the tenant to reduce their rent by **\$200.00** a month from the next rent payment when it is due and payable and this rent reduction will continue until such a time as the landlord has investigated and remediated all necessary repairs or until the tenancy is ended under the *Act*.

I Order the landlord to comply with s. 32 and s. 28 of the *Act* as indicated above and to ensure the tenant’s right to quite enjoyment is protected.

I Order the landlord to ensure there are sufficient garbage cans available for all tenants use to ensure garbage does not have to be stored inside the tenant's unit.

The landlord's application is dismissed without leave to reapply.

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: August 09, 2016

Residential Tenancy Branch