



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR

Introduction

This was a hearing with respect to the tenant's application for a monetary award, for a repair order and for a rent reduction. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing. The parties exchanged documentary evidence and submitted copies to the Residential Tenancy Branch prior to the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?
Should the landlord be ordered to perform repairs?

Background and Evidence

The rental unit is an apartment in Burnaby. The tenancy began July 1, 2014 for a one year term and it has proceeded by a series of fixed term agreements since then. The latest agreement is for a one year term Commencing July 1, 2016 and ending June 30, 2017. The tenancy agreement requires the tenant to move out at the end of the term. The agreement provides that the tenant will be liable to pay the landlord liquidated damages of \$580.00 if he ends the tenancy before the end of the fixed term, but it purports to allow the landlord to end the tenancy before the end of the fixed term if the landlord sells the rental unit to a purchaser who wishes to reside in the unit.

In the tenant's application filed on July 8, 2016 the tenant claimed a monetary award in the amount of \$3,240.00 and he requested an order requiring the landlord to perform repairs and for a rent reduction.

The tenant testified that on October 31, 2015 at 4:55 A.M there was a leak in the roof of the rental unit into his bedroom. The tenant was asleep at the time. The dirty water soaked his mattress and bedding and damaged other personal property. The tenant blamed the leak on the landlord's failure to maintain the rental property. He said that the roof leak was caused by the landlord's negligence in keeping the roof drain clear. The tenant said that a worker employed by the landlord came to the rental property later in the morning. He showed the tenant that the source of the problem. The tenant submitted pictures of the debris that he said had clogged the drain. He said that a second leak occurred on December 14th and the tenant spent a number of hours

helping the landlord's worker clear water from the blocked drain. The tenant said that he was told that the roof was in very bad shape.

The tenant said that there were other problems at the rental property. The outside windows of the building are very dirty because they have not been cleaned by the landlord for several years. He said that the outside drains in the parking area are unsafe. One was flooded earlier in the year and the tenant had to clean it because it was close to his truck. A second drain has a grill that isn't properly positioned or secured and a child could fall into it. The security lighting at night is inadequate.

The tenant said that he and other residents of the rental property are particularly concerned because unknown people are coming and going from the rental property at all hours. The tenant said that there have been homeless persons camping in the rental unit. there have been incidents of threatened assaults with a knife and the police have been called to attend. The tenant said that this problem was due to the landlord allowing non-residents to rent storage units in the basement of the rental unit.

In February, 2016 the tenant's representative wrote to the landlord and requested that the landlord compensate the tenant for his losses, including the loss of his mattress, bedding and clothing as well as a rent abatement. At that time the tenant requested payment of \$930.00.

The tenant submitted a monetary order worksheet setting out his claim in this proceeding as follows:

• Cost of mattress	\$812.22
• Estimate of damaged goods and supplies:	\$200.00
• Rent deduction for unrepaired rental unit:	\$450.00
• Compensation for time and suffering:	\$2,000.00
Total:	\$3,462.22

The tenant said that the landlord has repaired the ceiling in the rental unit, but still has not re-painted the ceiling.

The tenant also complained that the landlord has insisted upon the use of repeated fixed term tenancy agreements. Although the tenants have resided in the rental unit since July, 2014, according to the tenancy agreement they are responsible to pay liquidated damages to the landlord if they end the tenancy before the end of the third fixed term of the tenancy. The tenancy agreement also states that the landlord will not accept a fixed term tenancy: "even if it does not: specifically enforce the end of the fixed term". The agreement also purports to permit the landlord to end the tenancy before the end of the fixed term if it sells the premises to a purchaser who intends to reside in the premises. The tenant said at the hearing that he does not feel that he should be bound by the provision to pay liquidated damages; because of all the problems in the rental

property the tenant is considering moving and he believes that it would be unfair to allow the landlord to claim liquidated damages in these circumstances.

The landlord's representative denied that there was any negligence on the part of the landlord. He referred to an invoice from its contractor for the roof repairs in October and December. He submitted that there is no indication in the invoices that the landlord was negligent. The landlord submitted a copy of the report on the condition of the roof obtained from the contractor. He submitted that the report identified some problems with the roof and indications that the roof was not properly constructed in certain respects when it was installed and it therefore may require early repair or replacement. The landlord submitted that the report does not support a finding that the landlord was negligent in maintaining the roof. He submitted that the tenant is responsible to insuring his belongings against this sort of loss.

The landlord's representative denied that there is an ongoing security problem in the building. He testified that there is a commercial business that uses a storage area in the basement of the rental property, but he said that was not the cause of a homeless person gaining entrance to the building. The landlord's representative testified that the police have dealt with the intruder. The landlord does not agree that the tenant is entitled to compensation and does not consent to convert his tenancy to a month to month tenancy

Analysis

The tenant's evidence does show that there was a roof leak and the tenant's belongings were irreparably damaged by the flood. I find that the evidence does not establish that the roof leak was due to the landlord's negligence and absent negligence by the landlord it is not responsible for the tenant's loss. The tenant's claim for compensation for damaged belongings is therefore denied.

I find that the tenants have suffered a compensable loss of use and quiet enjoyment of the rental unit due to the water leaks in October and December and due to loss of use due to the damage and due to the work required to repair the damage to the roof and to the rental unit. I accept the tenant's testimony that he also performed several hours work to assist the landlord's contractor on the occasion of the second leak in December. I find that the tenant is entitled to an award of compensation for the loss of use and enjoyment of the rental unit and for the labour provided to help the landlord's contractor. I find that an appropriate global amount for these matters is an award in the amount of \$450.00. This award is the total award for loss of use and for the tenant's time and labour; save and except for this award the claims for a rent deduction and for time and suffering are denied. The tenant testified that the landlord has not painted the ceiling in the rental unit after it was repaired. I direct the landlord to have the ceiling repainted.

The tenant requested that the tenancy be converted to a month to month tenancy. The landlord refused to agree to this request. There may be an argument to be made by the

tenant that the landlord's use of successive fixed term tenancy agreements amounts to an unlawful attempt to contract out of the provisions of the *Residential Tenancy Act* or that the use of repeated fixed term tenancies, including a liquidated damage clause against the tenant also with a provision allowing the landlord to end the tenancy early amounts to an unconscionable term of the tenancy agreement, but it is premature for me to make such a finding. Unless and until the tenant chooses to end the tenancy before the end of the term the matter will be academic and it is not appropriate for me to make such a prospective declaratory finding. In the event that the tenant ends the tenancy early and the landlord advances a claim that the tenant does not accept, such as a claim for liquidated damages, it will be open to the tenant to dispute such a claim.

Conclusion

The tenant has been granted a monetary award in the amount of \$450.00. All other claims are dismissed without leave to reapply. The tenant did not pay a filing fee and I therefore do not award a filing fee for this application. This order may be registered in the Small Claims Court and enforced as an order of that court. Instead of enforcing this order, the tenant may, if he chooses, deduct the sum of \$450.00 from a future instalment of rent payable to the landlord.

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: September 26, 2016

Residential Tenancy Branch