



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, MNDC, OLC, RP, RR, FF

### Introduction

On August 22, 2016, the Tenant applied for dispute resolution seeking the following:

- to make emergency repairs to the rental unit.
- for an order that the Landlord make repairs to the rental unit.
- for an order that the Landlord to comply with the *Residential Tenancy Act (the Act)*, regulations or tenancy agreement.
- for a monetary order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent.
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The Tenant has provided digital evidence consisting of photographs showing the bathroom tub, ceiling, and kitchen sink within the rental unit. The Tenant also provided two video files that could not be opened because the format is not a format that can be

viewed on the Residential Tenancy Branch computers. As a result, I have not considered the two video files in this decision.

### Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The parties testified that the tenancy began on January 1 2011, and is currently a month to month tenancy. Rent in the amount of \$995.17 is due on the first day of each month. A security deposit of \$450.00 was paid by the Tenant to the Landlord.

The Tenant testified that there are repairs to his rental unit that have been started but not completed. He testified that on July 11, 2016, he contacted the Landlord and advised the Landlord of a water leak in the bathroom of his unit. He submits that the Landlord sent a handyman that day, but the handyman did not have the expertise to fix the problem and a plumber was needed.

On July 26, 2016 a plumber came to fix the problem in the bathroom, but Work Safe BC ordered the work to stop until asbestos testing was conducted. The Tenant testified that the Landlord had the asbestos testing done but would not release the asbestos test results to the Tenant. The Tenant testified that because the Landlord was being vague with the timelines for completing the repair, the Tenant also arranged for the asbestos testing. The Tenant also testified that he told the Landlord that there is mould growing.

The Tenant has provided a copy of a letter dated August 19, 2016, from the Landlord that states that the ceiling will be repaired with new drywall after a long term plumbing solution is implemented within the next 8 to 10 weeks. The Tenant submits that on August 31, 2016 the Landlord covered the hole in the bathroom ceiling with plastic and duct tape, but this did not help because it continued to leak.

The Tenant has provided a copy of a letter dated July 29, 2016, that he sent the Landlord. The letter states that the hazardous material testing was conducted on July

28, 2016, and that the Tenant requests additional mould testing and a copy of the results. The Tenant also states that he intends to compare the results with independent testing that he will obtain from another licensed and accredited company.

This Letter also states that the Tenant expects a rent reduction for each day that his bathroom or apartment is unusable and he expects repairs to be made in a timely manner. The letter states the Tenant expects a Notice of entry document to be served in accordance with the Act prior to entry of his unit and includes the names of the companies involved in the repair, the dates the repairs will begin and when the repairs will be complete. The Tenant provided documentary evidence of two more letters that he sent to the Landlord on August 4, 2016, and August 18, 2016, requesting the repairs be completed and seeking compensation for loss of use of the bathroom and apartment.

The Tenant testified that he cannot use the kitchen in the rental unit because the sink has backed up on one or two occasions with water. The Tenant testified that when another resident empties their sink, his sink backs up. The Tenant testified the sink filled up  $\frac{1}{2}$  to  $\frac{3}{4}$  full but has never over-flowed. The Tenant submits that it may be sewer back up and he needs to sterilize everything in the kitchen.

The Tenant testified that the city of Vancouver issued an order for the Landlord to complete the repairs within 30 days. The Tenant did not provide any documentary evidence to support this testimony.

The Tenant testified that due to a water leak in the bathroom and a plumbing problem in the kitchen of the rental unit, he is unable to live in the unit. The Tenant submits that he has been living elsewhere and wants compensation for loss of use of the rental unit in the amount of \$1,285.00. The Tenant claims the following compensation:

|   |           |
|---|-----------|
| Rent abatement (July 26 to Aug 26 inclusive): monthly rent    | \$995.17  |
| Less amount for use of rental unit for storage for belongings | -\$100.00 |
| Reimbursement for loss of use of internet in the rental unit  | \$84.00   |
| Reimbursement for West Coast Express Monthly pass             | \$201.00  |
| Reimbursement for asbestos testing                            | \$105.00  |

The Tenant is also seeking a rent reduction until the repairs are complete. The Tenant is seeking a reduction in the amount of \$39.48 per day. The Tenant submits that \$39.48 per day is the amount of the monthly rent less \$100.00 per month for storage multiplied by 12 months and divided by 365 days.

In response to the Tenant's claims the Landlord testified that they received the Tenants complaint on July 11, 2016, and the manager went to look at the problem. On July 26, 2016, a plumber opened the bathroom ceiling and was scheduled to return on July 28, 2016, when Work Safe BC stopped the work until asbestos testing was conducted.

The Landlord testified that they got the asbestos test results back on August 8, 2016, and submitted the information to Work Safe BC. The Landlord testified that the plumber they were using was not available to return and complete the work until sometime in September.

The Landlord testified that they did call other plumbers and they recommended that the Landlord use a plumber that is familiar with the building. The Landlord submits that there is no water shut off for the rental unit, and that the water for the entire building needs to be shut off to conduct repairs. The Landlord testified that the water leak in the bathroom is coming from the upstairs unit.

The Landlord provided documentary evidence of an email from a plumbing company dated August 31, 2016, that states the work on the Tenant's unit was delayed due to asbestos testing and that the plumber not being available to return until September 13.

The Owner testified that the rental building was built in the 1950's and many plumbers do not want to deal with repairs. He submits that the plumber they use knows the building well. He submits that they tried to mitigate the issue by looking for other plumbers but other plumbers would not take the job.

The Landlord testified that when the Tenant asked for a copy of the asbestos report he was told that the result was negative. In the Tenant's documentary evidence, a letter from the Landlord to the Tenant dated August 4, 2016, states that the Landlord just received the test results and that no asbestos was detected in any of the samples.

The Landlord testified that the Tenant never spoke to the Landlord about an alternate place to stay and that the Tenant is aggressive and adversarial. The Owner submits that he does not see why the Tenant cannot stay in the rental unit.

The Landlord provided photographic evidence of two pictures showing a hole in the bathroom ceiling covered with plastic and duct tape. The Landlord testified that the pictures do not show mould and that there is no proof of toxic mould.

The Landlord does not agree with any of the Tenant's claims for compensation.

The Owner testified that their plumber would be at the rental building the day after this hearing to deal with the leak issue.

Section 32 of the Act states that 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.*

Section 33 of the Act states that “emergency repairs” means repairs that are

- (a) urgent,
  - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
  - (c) made for the purpose of repairing
    - (i) major leaks in pipes or the roof,
    - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
    - (iii) the primary heating system,
    - (iv) damaged or defective locks that give access to a rental unit,
    - (v) the electrical systems, or
    - (vi) in prescribed circumstances, a rental unit or residential property.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.

### Analysis

Residential Tenancy Policy Guideline #16 Claims in Damages states that if a Tenant is deprived of the use of all or part of the premises through no fault of their 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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has provided sufficient evidence to establish that a water leak originating above his bathroom has restricted the use of his bathroom. I find that the Tenant is entitled to compensation for the loss of use of the bathroom from July 26, 2016, to

September 13, 2016. However, I do not find that the Tenant needed to move out of the rental unit during this time period. There is insufficient evidence before me to prove that there was a health or safety risk from mould or any other hazardous material that prevented the Tenant from residing in the unit. While I accept that it would be an inconvenience for the Tenant, the Tenant could have arranged to use a shower elsewhere, including a community recreation centre.

I also do not accept that the Tenant could not use the kitchen during this period of time. The sink backed up on two occasions when another resident emptied their sink and the Tenant was not able to recreate the problem. There is insufficient evidence from the Tenant that using the kitchen would present a health or safety risk.

Accordingly, I dismiss the Tenants claims that the Landlord is responsible to pay for the Tenant's transportation costs in the amount of \$201.00, and the Tenant's cable / internet costs in the amount of \$84.00.

I also dismiss the Tenant's claim to be reimbursed \$105.00 for the cost of the asbestos testing. The Landlord did not agree to reimburse the Tenant for having the asbestos test completed again, and I find the test was not needed. Reimbursement for this testing does not meet the requirements of an emergency repair under section 33 of the Act.

I find the Tenant was able to enjoy use of the living room, bedroom, and kitchen for sleeping and eating and the Tenant was able to have some use of the bathroom. I award the Tenant \$321.00 in compensation for loss of use of the bathtub and shower from July 26, 2016, to September 13, 2016, a period of 50 days. I assign the value of use of the bathtub and shower to be 20% of the monthly rent. ( $\$995.17 \times .20 / 31 = \$6.42$  per day)

I find the amount of time it is taking the Landlord to deal with the repairs in the Tenant's unit is unreasonable. More than two months has passed since the issue was reported and the Landlord has not completed the repairs which, pursuant to Section 33, I find are considered emergency repairs. I order the Landlord to complete the bathroom repairs using a licensed plumber no later than September 30, 2016.

The Tenant is awarded a rent reduction in the amount of \$6.42 per day for every day past September 13, 2016, that the repairs to the bathroom are not completed. I order that the repairs are completed when the parties can reach an agreement that the repairs to the bathroom are complete and that their agreement is documented in writing or the landlord's obtains an order from an Arbitrator that the repairs are completed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was mostly successful in his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

In total, I award the Tenant the amount of \$421.00. This amount is comprised of the \$321.00 for loss of use of part of the premises; and the recovery of the \$100.00 filing fee. I authorize the Tenant to deduct the amount of \$421.00 from one (1) future rent payment.

### Conclusion

The Tenant's application was mostly successful. I order the Landlord to complete the bathroom repairs using a licensed plumber no later than September 30, 2016.

I grant the Tenant the amount of \$421.00. I authorize the Tenant to deduct the amount of \$421.00 from one (1) future rent payment.

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 21, 2016

---

Residential Tenancy Branch