



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP RP

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on November 18, 2016. The Tenant filed seeking Orders to have the Landlord make emergency repairs for health and safety reasons and make repairs to the unit, site or property.

The hearing was conducted via teleconference and was attended by the Tenant and the Tenant's Agent. Each person gave affirmed testimony. As submissions were made by the Tenant and his Agent, for the remainder of this decision, terms or references to the Tenant importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

No one was in attendance on behalf of the Landlord. The Tenant submitted evidence that the Landlord was served with copies of his application for Dispute Resolution, Notice of Hearing; and copies of his documentary and photographic evidence by registered mail on November 19, 2016.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Tenant, I find the Landlord was deemed served notice of this application and hearing on November 24, 16, five days after they were mailed. As such, I continued to hear the undisputed evidence of the Tenants in absence of the Landlord.

Issue(s) to be Decided

Should the Landlord be ordered to make repairs and emergency repairs to the unit, site, or property?

Background and Evidence

The Tenant has occupied the rental unit since approximately May 2011. Rent of \$650.00 is payable on or before the first of each month. On or before May 2011 the Tenant paid \$325.00 as the security deposit.

The Tenant stated he recalled signing a piece of paper but was not sure if it was a tenancy agreement or an “Intent to Rent Form” to have his rent paid directly to the Landlord from his income assistance payments. He submitted that when he first agreed to rent the unit it had a fridge and stove inside the unit.

The rental unit was described as an apartment located on the first floor of a multi-level apartment building. The building was described as being an “older” building; however, the Tenants were unaware of the actual age of the building.

The Tenants submitted evidence of a letter they wrote to the Landlord on October 13, 2016. That letter was personally served to the Landlord’s family member A.V. on October 14, 2016. A.V. is the person who conducts maintenance in the building. That letter included, in part, requests for repairs as follows:

- 1) *Monitoring and treatment/eradication of populations of mice and shrew or other rodents, and closing of their entry points.*
- 2) *Monitoring and treatment/eradication of cockroaches or other roaches and insect infestations.*
- 3) *Repair or replacement of the refrigerator in my apartment, which has a non-sealing door and on-going leaks which may include unsafe liquids (e.g. refrigerant).*
- 4) *Repair or replacement of the stove to be fully workable with four operational elements and oven, and workable kitchen cabinets.*

[Reproduced as written]

On the Tenant's application for Dispute Resolution the Tenant wrote in the details of the dispute as follows:

Shrews, mice, cockroaches and other bugs throughout the unit. AS well, there is a large hole in the living room where the landlord was looking for a plumbing leak – covered only with plywood. Leaking fridge.

[Reproduced as written]

The Agent testified when the Landlord failed to take action to remediate the rodent and pest issues the Tenant temporarily moved out of the rental unit on November 18, 2016. The Agent stated that she has since hired a pest control company to assess the Tenant's unit and begin the required treatments.

The Agent testified she has been paying for the pest control company to come and treat the Tenant's unit once a week. The pest control company has laid out traps for the rodents and applied pesticide to treat the cockroach and insect infestation. They have followed the pest control company's recommendations and cleaned up the unit and placed all items such as food and clothing in sealed plastic tubs to assist in the treatment processes.

The Agent said they were told the problem would not be fixed simply by treating the Tenant's unit as the entry/access points or holes need to be sealed off. That process includes the requirement to caulk around all baseboards and entry points and seal off holes in the walls and flooring.

The Agent submitted oral evidence that the pest control company had inspected a few other units and met with the Landlord's maintenance person to advise him the rodent and insect infestation was a building issue and not an individual unit issue. She said despite that conversation the Landlord's maintenance staff have continually refused to accept responsibility for pest control treatments and told the Tenant that no one else in the building had an issue with rodents or pests. The Agent argued she was told there were at least four other units in the building that were infested and that the rodents and insects will continue to travel throughout the building unless the entire building is treated.

The Agent stated that since serving the Landlord with their application for Dispute Resolution the following work has been completed: the stove elements and oven have been repaired; the maintenance person sealed up two holes in the wall with plaster; he fixed the cutlery drawer; fixed the bi-fold doors in the hallway; and removed the bi-fold doors from the bedroom.

The refrigerator remains unrepaired. The Agent stated the refrigerator constantly leaks water, so much so, that the bottom crispers inside are sitting in several inches of water and cannot be used. The seal around the fridge door does not work at all, and several of the shelves inside the fridge have been broken for years. She reiterated her concern that refrigerant might be leaking into the fridge which poses a significant health issue. The fridge was described as being a yellow color and very old.

The Tenants submitted that approximately six months prior to the hearing the Landlord cut a large hole in the floor in the Tenant's living room and another hole in his patio to when dealing with a water leak issue. The Landlord simply placed a piece of plywood over each hole and has not properly repaired the holes.

In closing, the Agent asserted the Landlord has failed to provide proper snow and ice maintenance for the building. She noted the sidewalk and driveway areas are extremely icy causing the Tenant and other occupants to fall.

In support of their application the Tenant submitted, among other things, photographs displaying the dead rodents; insects; cockroaches; the broken drawer; holes in the walls at baseboard level; and the current condition of the fridge with pools of water in and around it.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 1 of the *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the *Act* stipulates that except as modified or varied under this *Act*, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Section 32 of the *Act* requires a landlord to 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.

Section 33(1) of the *Act* defines "**emergency repairs**" as 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 major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; the electrical systems; or in prescribed circumstances, a rental unit or residential property.

Section 33(5) of the *Act* provides that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Policy Guideline 1 stipulates, in part, that the **landlord is responsible** for repairs to appliances provided under the tenancy agreement; for pest control for the building and property; and for snow and ice removal in a multi-unit building [my emphasis added with bold text].

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I accept the undisputed evidence of the Tenant and find pursuant to section 62(2) of the *Act* as follows:

I accept that these parties entered into a tenancy agreement, verbal or written, and the terms of that tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*, pursuant to sections 1 and 91 of the *Act*. In addition, I accept that the terms of that tenancy agreement provided the Tenant with a working refrigerator, stove, and oven.

In this matter, I find the Landlord has breached section 32 of the *Act* by failing to maintain the rental unit and property in a manner that makes it suitable for occupation by the Tenant.

I further accept the rental unit is in need of emergency repairs for health and safety reasons consisting of pest control maintenance, including in part, sealing up areas of access and having pest control treatments for the entire building. In addition I accept the unit is in need of regular repairs.

Accordingly, I **Order** the Landlord to hire the services of a professional pest control company **no later than, December 30, 2016.**

To clarify the aforementioned order, the Landlord is ordered to acquire the pest control company's services to treat the current rodent and insect problems in the rental unit and building, and continue with treatments until such time as the rodent and insect problem have been properly remediated and maintained.

I further order the Landlord to seal off all remaining means of rodent and insect access into the Tenant's rental unit, including but not limited to the application of silicone around baseboards and windows; ceiling up rodent and insect access holes; and other maintenance as requested by the pest control company, **no later than, December 30, 2016.**

The Tenant and Agent have incurred costs for emergency repairs when they hired a pest control company to begin treatment of the Tenant's unit, after the Landlord and/or her staff refused to arrange for treatments. Therefore, as those costs were incurred for emergency repairs, if after the Tenant provides the Landlord with copies of the receipts the Landlord refuses to reimburse the Tenant the full amount, I grant the Tenant leave to file another application to recover those costs from the Landlord, pursuant to section 33(5) of the *Act*.

From the Tenants' submissions the stove and oven have been repaired. However, the refrigerator which, based on its color and appearance in the photographs, may be from the 1970's, remains in deplorable condition and unrepaired. Therefore, I **Order** the Landlord to provide the Tenant with a fully operational and non-leaking refrigerator **no later than December 23, 2016.**

I accept the Tenants' submissions that the Landlord failed to repair the holes the Landlord cut into in the living room floor and patio. Accordingly, I **Order** the Landlord to properly repair the two holes in a manner that leaves the areas safe and properly sealed **no later than December 30, 2016.**

Although the issue of the icy sidewalks and driveway did not form part of the Tenant's application, I caution the Landlord that it is the Landlord's responsibility to provide snow removal and ice maintain for the sidewalks and driveway in a multi-unit building, pursuant to Policy Guideline 1 and section 32 of the *Act*.

I caution the Landlord that under section 95(2) of the *Act*, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the *Act*, or for seeking or obtaining a remedy under the *Act*, may be found to have committed an offence and is subject to a fine or administrative penalty.

Also, the Landlord should be aware that pursuant to section 94.1(1) of the *Act*, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that (a) the person has contravened a provision of this Act or the regulations, or (b) failed to comply with a decision or order of the director.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment of the rental unit. If a landlord fails to maintain the condition of a rental unit they may be seen as breaching the tenant's right to quiet enjoyment.

As per the foregoing, if this Landlord fails to comply with my orders, as outlined above, the Tenant will have liberty to file another application to seek monetary compensation for loss of quiet enjoyment.

Conclusion

The Landlord was found to be in breach of the *Act* and was ordered to conduct repairs as outlined above.

This decision is final, legally binding, and 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: December 16, 2016

Residential Tenancy Branch