



Dispute Resolution Services

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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 17, 2016. The Tenant filed seeking Orders for emergency repairs and repairs to the unit, site, or property.

The hearing was conducted via teleconference and was attended by two Landlords, the Tenant, and the Tenant's Agent. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords confirmed receipt of the Tenant's application and notice of hearing documents. The Landlords testified they did not receive documentary evidence from the Tenant and they did not submit documentary evidence in response to the Tenant's application.

The male Landlord (maintenance person) submitted all of the evidence on behalf of both Landlords. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

I heard the Agent state that she had been assisting the Tenant with this application process since the beginning of November 2016. She stated she took the photographs and had them printed so the Tenant could use them as evidence for this dispute.

The Tenant stated that after meeting with his Agent he filed his application for Dispute Resolution and submitted his evidence to the Residential Tenancy Branch (RTB) himself. I heard the Tenant and Agent stated that neither one of them served the photographic evidence to the Landlords.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

- 1. Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.13 provides that to ensure fairness and to the extent possible, copies of all of the applicant's available evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC office and served on the other party in a single complete package. An applicant submitting any subsequent evidence must be prepared to explain to the arbitrator why the evidence was not included in the initial evidence package.

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Tenant's evidence was not served upon the Landlords, in accordance with Rules of Procedure, I declined to consider that photographic evidence. I did however consider the Tenant's and his Agent's oral submissions.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

- 1) Is there sufficient evidence before me to prove the Landlords have failed to maintain the rental unit in a manner that complies with the *Act*?
- 2) Has the Tenant established that he requested repairs to his rental unit in accordance with the *Act*?

Background and Evidence

I heard that the parties entered into a written tenancy agreement that commenced on November 1, 2015. I also heard that the Tenant has occupied the rental unit since October 29, 2015. Rent of \$550.00 is payable on the first of each month and the Tenant paid \$275.00 as the security deposit in October 2015.

The Tenant asserted that, despite his requests, he has never received a copy of his signed tenancy agreement. The Landlord disputed this submission and stated a copy was provided to the Tenant shortly after he signed the agreement. In addition, the Landlord stated that the Tenant never asked him for another copy of that agreement until the Tenant said he wanted a copy during this hearing.

In addition, the Tenant now seeks an Order to have the Landlord provide professional pest control for treatment of the ants, cockroaches, and mice that are currently in his rental unit. The Agent submitted the Landlord should be ordered to provide a form of pest control that did not involve a spray method due to the Tenant's medical condition.

The Tenant submitted that he was also seeking the following repair orders: installation of weather stripping to his exterior door; repairs of the two ceiling fans to prevent cigarette smoke and water coming through them in the kitchen and bathroom; and

repair of the ceiling and hole in the bathroom wall that was caused by a previous water leak.

I heard the Landlord state he took care of the ants by spreading some pesticide around the rental unit. He said he was not licensed to apply pesticides and that he simply used a product he purchased from a local retail store. He argued that he attended the rental unit after the Tenant complained about the presence of cockroaches; however, each time he goes to that unit the Landlord cannot see any cockroaches. The Landlord asserted the cockroaches were brought into the building first in a different rental unit which was occupied by the Agent's brother.

The Landlord confirmed there had been a water leak in October 2016 and that he had not completed the required repairs because he was waiting for the area to dry out. He noted that the Tenant had unplugged the ceiling fan(s) and placed paper overtop of them to prevent further water from dripping down into his rental unit.

The Landlord testified that he believed the Tenant filed his application for Dispute Resolution because he knew he was going to be evicted because he does not pay his rent on time. He argued that for the past three or four months he has had to chase the Tenant for his rent payment. The Landlord stated that as of the date of this hearing the Tenant's January 1, 2017 rent had not been paid so he served the Tenant a 10 Day Notice on January 3, 2017.

I heard the Landlord say that he had never been told about mice in the rental unit nor was he told about the Tenant's door requiring weather stripping prior to this hearing. The Landlord went on to describe how the police had to be called after the Landlord attempted to collect the January 2017 rent.

The Tenant confirmed the police had attended the rental unit after the Landlord attempted to collect his rent. I heard the Tenant state he withheld his January 2017 rent payment because he saw a cockroach run across his son's foot during the holidays.

The Tenant stated that he did not put his requests for repairs in writing prior to filing his application for Dispute Resolution. I then heard the Tenant argue that the Landlord enters his rental unit without proper written notice.

The Landlord disputed the Tenant's submission and asserted that the Tenant gave him permission to enter the unit until the water damage repairs were completed.

Analysis

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

The irrefutable evidence was that this landlord/tenant relationship has become argumentative and adversarial. That being said, the Landlord and Tenant are still required to fulfil their obligations under the *Residential Tenancy Act* (the *Act*). Specifically the Tenant is required to pay his rent on time in accordance with the tenancy agreement and section 26 of the *Act*; and the Landlord is required to provide and maintain the rental unit in accordance with the health and safety requirements and make the unit suitable for occupation by the Tenant, pursuant to section 32 of the *Act*.

When a tenant files an application for Dispute Resolution seeking orders for repairs, the burden to prove repairs are required and a request for repairs was served upon the landlord in writing, rests upon the tenant. In this case, I find there was insufficient evidence to prove the Landlord was notified, in writing, of the requirement for repairs or pest control; and there was insufficient evidence to prove those repairs were required. In addition, there was insufficient evidence to prove the Tenant requested a copy of his tenancy agreement, in writing, prior to filing his application for dispute resolution. Accordingly, I dismiss the Tenant's application in its entirety.

I strongly suggest that both the Tenant and Landlord educate themselves on their rights and responsibilities under the *Act*. That information may be accessed on the Residential Tenancy Branch (RTB) website at www.gov.bc.ca , in person from any Service B.C. Office, or from the RTB in Burnaby.

Conclusion

The Tenant was found to have submitted insufficient evidence and his application was dismissed in its entirety.

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: January 13, 2017

Residential Tenancy Branch