



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPM, MND, MNSD, O, FF; MNR, MNDC, ERP, RP, PSF,
LRE, RR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for breach of an agreement with the landlord and based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for her application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- a monetary order for the cost of emergency repairs and for compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make regular and emergency repairs, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order restricting the landlord's right to enter the unit, pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for their application, pursuant to section 72.

Two of the four tenants, tenant SM (“tenant”) and “tenant AH,” and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The two tenants confirmed that they had authority to speak on behalf of the other two tenants, “tenant LM” and “tenant CU” named in their application, as agents at this hearing (collectively “tenants”). Tenant AH did not provide any testimony at this hearing, he observed only. This hearing lasted approximately 90 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement of a portion of both applications.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

At the outset of the hearing, the tenant confirmed that the tenants no longer wanted to pursue their claims for a rent reduction and an order for the landlord to provide services and facilities. Accordingly, these portions of the tenants’ application are dismissed without leave to reapply.

Issues to be Decided

Are both parties entitled to the relief as outlined above?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties’ claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2015. Monthly rent in the amount of \$5,000.00 is payable on the first day of each month. The rent was originally \$4,600.00 but a new written tenancy agreement was signed on a month-to-month basis, which all parties agreed would include a higher rent of \$5,000.00 per month. A security deposit of \$2,300.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by the landlord and tenant only. The tenant and three other people moved into the rental unit in March 2015. The three other people, aside from the tenant, moved out of the unit during the course of this tenancy. The tenant, tenant AH, tenant LM and tenant CU named in the tenants’ application, currently reside in the rental unit. The rental unit is a 100-year-old heritage house.

The landlord seeks a monetary order of \$1,464.40 for the cost of inspections and repairs she made at the rental unit, which she said were due to the tenants' actions. The landlord also seeks an order of possession to the rental unit, based on previous notices to end tenancy from the tenants. The landlord further seeks to recover the \$100.00 filing fee paid for her application.

The tenants seek an order requiring the landlord to make repairs to the rental unit, including to a hole in the wall in the downstairs bathroom, as well as cleaning of all mold in the rental unit and pest control to get rid of the raccoons in the shed at the rental unit. The tenants seek compensation totalling \$8,500.00 from the landlord for a loss of use of facilities and services, a failure to complete repairs, completing repairs on behalf of the landlord and living with mold in the rental unit.

The tenants seek \$2,000.00 for having to live with extensive mold in the rental unit and having their personal belongings and clothing destroyed by the mold. Both parties agreed that the tenants hired a mold expert team to inspect the tenant's bedroom at the rental unit where mold was found and a report was produced and given to the landlord. The tenants did not provide a copy of the report for this hearing. The landlord said that she came to inspect the tenant's bedroom on the day that she was notified by the tenant. The landlord claimed that she had an expert "BS" come in to clean the mold at the windows of the tenant's bedroom. The landlord provided an invoice from BS indicating that he inspected the rental unit and found no additional mold, that he cleaned the window sills in the upper bedroom for \$265.00, and that he cautioned the tenants that the windows were single-paned so they had to exercise more cleanliness to avoid future problems.

The tenants seek \$3,000.00 for a raccoon infestation in the shed of the rental unit where they store their belongings. The landlord stated that the tenants did not notify her that there were raccoons in the shed and she did not receive any written requests for pest control from them. The tenant maintained that he notified the landlord numerous times. The landlord said that the shed is not part of the tenancy and it is not included in the written agreement which the tenants signed. The tenants did not provide a copy of the written tenancy agreement for this hearing. The landlord explained that she provided a copy but I did not receive it. The tenants maintained that they did not receive a copy from the landlord. The landlord noted that the shed will be demolished once the tenants vacate the property. She stated that the tenants only have use of the carport for their cars only, not the shed. The landlord provided a copy of the move-in condition inspection report signed by the landlord and the tenant, which indicates in the section of "garage or parking area" a comment by the landlord "old + in bad shape – not included."

The tenant testified that a pipe burst in the wall behind the downstairs bathroom in April 2016. He explained that the tenants repaired the hole in the wall after the pipe repair and paid \$300.00 to a friend to do the drywall and painting. The landlord said that the tenants told her that they would cover the cost of the above repair and she was not provided with the invoice or cost amount from the tenants so she did not agree to pay it.

The tenant said that the pipe burst for a second time in the same area in October 2016. He claimed that the tenants had no running water for four days and they all had to vacate the rental unit to stay with friends and family in order to have showers and drinking water. He explained that the tenants paid \$1,000.00 for staying with family and friends but they did not provide any documentation for this hearing to confirm same. The tenant said that he notified the landlord about the problem by calling and sending text messages but she did not respond. He maintained that when the landlord did respond, it took four days for her to send someone to the rental unit to fix the problem. The landlord said that she retained a company, "BPH," to inspect and fix the problem and provided an email invoice from October 31, 2016 for \$177.00. The landlord said that the leak was reported by the tenants on October 27 or 28, 2016 and she had someone fix it right away, despite the fact that the invoice was issued a few days later. The tenants said that the landlord's company left a large 2x6 foot hole in the downstairs bathroom wall which they are unable to temporarily cover because it needs drywall to be covered properly. The tenants seek compensation of \$1,000.00 from the landlord, for this hole being exposed for months. The landlord said that she was not notified by the tenants of this existing hole prior to this hearing.

The tenants seek \$1,000.00 compensation from the landlord because the shower handle in the downstairs bathroom came off and they were unable to shower for two weeks. The tenant said that he reported the issue to the landlord but she did not do anything for two weeks. The landlord stated that the tenants broke this shower handle and tried to open it with a wrench and stripped the cartridge. She maintained that within two to three days of being notified of the problem, she had BS attend at the rental unit to inspect, remove and replace with a new cartridge for \$315.00 for the two trips and \$488.00 for the fixture. The landlord seeks this compensation back from the tenants because she said that they broke the handle and cartridge. The landlord explained that the tenants could have used the upstairs bathroom while the downstairs bathroom shower was not working.

The landlord testified that the tenants also broke the handle for the upstairs shower and provided an invoice and explanation from "RB" who works for BPH for the labour cost

for fixing the upper shower fixture for \$225.00. The landlord also provided an invoice for the new cartridge part that she had to buy to replace the old one for \$134.40. The landlord seeks both of these amounts from the tenants because she said they caused the damages.

The tenants seek \$200.00 for toilet seat repairs and labour. The tenant claimed that the toilet seat in the downstairs bathroom broke in July 2016, he asked the landlord to fix it and when nothing happened, he had his own plumber fix the problem. the landlord disputes this claim, stating that the tenants did not provide any proof of costs.

Analysis

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 31, 2017, by which time the tenants and any other occupants will have vacated the rental unit;
2. The tenants agreed to pay the landlord \$5,000.00 for January 2017 rent by 10:00 a.m. on January 10, 2017;
3. The landlord agreed to abide by section 29 of the *Act* and to provide the tenants with at least 24 hours' written notice prior to entering the rental unit;
4. The tenants agreed to provide access to the rental unit for the landlord to inspect the hole in the wall in the downstairs bathroom by January 13, 2017 and the landlord agreed, at her own cost, to have a professional repair this hole;
5. The landlord agreed to inspect the shed for raccoons at the rental unit by January 13, 2017 and to have pest control professionals inspect and get rid of any raccoons in the shed at the landlord's own cost.

Legislation

Section 32 of the *Act* discusses landlord and tenant obligations to repair and maintain a rental unit:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Landlord's Application

I dismiss the landlord's claim for a monetary order for damage to the rental unit in the amount of \$1,464.40. I find that as per section 32 of the *Act*, it is the landlord's obligation to complete repairs at the rental unit in order to ensure that it complies with health, safety and housing standards, having regard to the age and character of the unit. I find that the landlord failed to provide sufficient proof that the tenants caused the damages that she alleges.

I find that the landlord failed to show that the tenants caused the mold in the rental unit. The tenants hired their own mold experts to complete a report at no charge and the landlord acted on that report when she brought in her own experts. The landlord had an inspection by BS as well as cleaning of window sills in the upper bedroom of \$265.00 and the tenant's bedroom for \$150.00. With single-paned windows, as noted by BS, and a 100-year-old heritage home, as noted by the landlord, mold can accumulate due to different factors. I find that it is the landlord's responsibility to rectify these mold issues and the tenants are not responsible to reimburse her for these obligations.

I find that the tenants are not responsible for the second pipe burst repair in October 2016, charged to the landlord for \$177.00. It is the landlord's responsibility to deal with this maintenance issue and the landlord did not prove that the tenants caused the pipes to burst. As the home is old, pipe maintenance will be required over time.

I find that the tenants are not responsible for the broken shower fixtures in the upstairs and downstairs bathrooms of the rental unit. Although the fixtures broke, there is no proof that this was due to the deliberate actions of the tenants, rather than reasonable wear and tear to be expected during a tenancy. Because of the old age of this home, continuous maintenance over time is required, which is the responsibility of the landlord, not the tenants. Therefore, I find that the landlord is responsible for all of the costs associated with the bathrooms, including \$315.00 for two trips for BS, \$488.00 for the upper bathroom fixture, the \$225.00 labour cost for fixing the upper shower fixture by BPH, and \$134.40 for the new cartridge part.

I dismiss the landlord's claim to retain the tenants' security deposit with leave to reapply. The tenants' security deposit of \$2,300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

As the landlord was mainly unsuccessful in her application, I find that she is not entitled to recover the \$100.00 filing fee paid for her application.

Tenants' Application

I find that the tenants failed to prove that any emergency repairs are required at the rental unit or that they paid any amounts for emergency repairs. These portions of their application are dismissed without leave to reapply.

I dismiss the tenant's claim for \$2,000.00 for mold accumulating in the rental unit and destroying their personal belongings. I also dismiss the tenant's claim for cleaning the mold at the rental unit because I find that the tenants failed to prove that additional cleaning is required. The landlord disputed the tenants' claims. I find that the landlord

dealt with the mold issues and had the affected areas cleaned by her own expert BS, whom she paid and provided proof of payment. The tenants did not produce the report that they had their mold experts complete. The tenants did not provide any written documentation or photographs to confirm where the ongoing mold was, that they notified the landlord of ongoing mold problems after she cleaned it, or that they suffered medical ailments or damage to their belongings, due to the mold. The tenants did not provide a breakdown for the \$2,000.00 claimed or delineate which clothing or personal items were affected by the mold.

I dismiss the tenants' claim of \$3,000.00 for having a raccoon infestation for 20 months in the shed where they store their belongings. I find that the shed at the rental property is not included as a service or facility with rent. I find that the landlord's move-in condition inspection report, which clearly states that the garage area is "not included," demonstrates that the tenants did not have use of the garage or shed area at the rental unit, only the carport to park their cars. I find that the tenants failed to provide written documentation that they notified the landlord about the raccoon problem, that they requested inspections or pest control be done, or how the raccoons were affecting their belongings in the shed. I find that they failed to provide any photographs of the shed or the raccoons living in there. I find that they failed to describe how the raccoons affected their belongings. I also find that the tenants were unable to justify the amount of \$3,000.00, except to state that it was a portion of their rent.

I dismiss the tenants' claim of \$200.00 for toilet seat repairs and labour. The landlord disputed this cost saying she was not given any invoices or receipts from the tenants to confirm that the above work was done. The tenants did not provide documentary proof that they notified the landlord that a repair was required. The tenants were unable to justify the above amount, as they did not submit an invoice or payment receipt.

I dismiss the tenants' claim of \$300.00 for painting and drywall for the hole in the wall due to the pipe bursting the first time in April 2016. The landlord disputed the claim, stating that she did not receive any proof of cost from the tenants. I find that the tenants did not provide an invoice or proof of payment for the above amount.

I dismiss the tenants' claim of \$1,000.00 because the tenants had no running water for four days and had to vacate to stay with friends and family, due to a second pipe burst in the downstairs bathroom in October 2016. The landlord disputed this claim and said that she dealt with the issue right away, providing an invoice to confirm same. The tenants did not provide proof of payment for the above amount.

I dismiss the tenants' claim of \$1,000.00 because the shower handle in the downstairs bathroom came off and they were unable to shower for two weeks. The landlord disputed this claim and paid her own experts to come in and fix this problem. The tenants did not justify the above amount or provide a breakdown.

I dismiss the tenants' claim of \$1,000.00 for a large 2x6 foot hole in the downstairs bathroom wall being exposed for months. The landlord disputed this claim. The tenants did not show how this hole caused any loss to them. They did not provide a breakdown or justification for claiming the above amount.

As the tenants were mainly unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on January 31, 2017. The tenant(s) must be served with this Order in the event that the tenant(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on January 31, 2017. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue a monetary Order in the landlord's favour in the amount of \$5,000.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant(s) do not abide by condition #2 of the above agreement. The tenant(s) must be served with a copy of this Order as soon as possible after the tenant(s) do not abide by condition #2 of the above agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the tenants to provide the landlord with access to the rental unit and I order the landlord to inspect the hole in the wall in the downstairs bathroom by January 13, 2017. I order the landlord at her own cost, to have a professional repair this hole.

I order the landlord to inspect the shed for raccoons at the rental unit by January 13, 2017 and to have pest control professionals inspect and get rid of any raccoons in the shed at the landlord's own cost.

The landlord's application for damage to the rental unit and to recover the filing fee, is dismissed without leave to reapply.

The landlord's application for other unspecified relief, as no evidence was provided about this claim, is dismissed without leave to reapply.

The tenants' security deposit of \$2,300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The tenants' application for monetary orders, a rent reduction, an order requiring the landlord to provide services and facilities, for emergency repairs, and to recover the filing fee, is dismissed without leave to reapply.

The landlord's application for an order of possession and the tenants' application for an order restricting the landlord's right to enter the rental unit and for the landlord to complete regular repairs, have been settled at this hearing, as noted above.

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: January 12, 2017

Residential Tenancy Branch