Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Himalaya Restaurant Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Assistant Property Manager stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail, sometime in December of 2016. The Tenant acknowledged receipt of these documents and he declared that he is representing the female Tenant at these proceedings.

The Tenants filed an Application for Dispute Resolution, in which they applied for a monetary Order for money owed or compensation for damage or loss, to recover the cost of emergency repairs, and for "other".

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, on December 03, 2016. The Landlord acknowledged receipt of these documents.

On December 05, 2016 the Tenant submitted 52 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on, or about, December 05, 2016. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 11, 2017 the Tenant submitted 35 pages of evidence to the Residential Tenancy Branch, some of which had been previously submitted. The Tenant stated that this evidence was served to the Landlord, via courier, on, or about, January 10, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 11, 2017 the Landlord submitted 22 pages of evidence to the Residential Tenancy Branch. On the same date the Landlord submitted a duplicate copy of this evidence package, with the exception that the documents in the second package are numbered on the bottom corner. The Landlord submitted 6 photographs with the second evidence package. The Agent

for the Landlord stated that this evidence was mailed to the Tenant, via registered mail, on December 30, 2016. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

May 04, 2017 the Landlord submitted 25 pages of evidence to the Residential Tenancy Branch, some of which had been previously submitted. The Agent for the Landlord stated that this evidence was mailed to the Tenant, via registered mail, on May 02, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter:

This hearing exceeded the time scheduled for the hearing, in part, because the testimony presented by the parties was frequently repetitive.

The hearing was further delayed by problems with the evidence submitted by the parties. The Tenants labelled documents in their first evidence package differently than they labelled the identical documents in their second evidence package. The Landlord numbered the pages in one of the submissions made on January 11, 2017 but did not number the pages on the duplicate copy of the evidence package submitted on the same date.

Issue(s) to be Decided:

Is the Landlord entitled to compensation for cleaning the rental unit, to compensation for lost revenue, and to keep all or part of the security deposit?
Are the Tenants entitled to compensation for deficiencies with the rental unit and the cost of emergency repairs?

Background and Evidence:

The Landlord and the Tenants agree that:

- the tenancy began on July 15, 2015;
- the fixed term of the tenancy ended on July 31, 2016;
- when the tenancy began the Tenants agreed to pay monthly rent of $1,250.00 by the first day of each month for the duration of the tenancy;
- the rent was increased to $1,286.00 on August 01, 2016;
- the rental unit was vacated on November 30, 2016;
- on November 21, 2016 the Tenants gave written notice to end the tenancy, effective November 30, 2016;
- the Tenants paid a security deposit of $625.00 and a key deposit of $170.00;
- the deposits have not been returned to the Tenants; and

- the Tenants mailed their forwarding address to the Landlord, by registered mail, in November of 2016.

The Agent for the Landlord stated that a condition inspection report was completed at the start of the tenancy, although it was not submitted in evidence. The Tenant stated that a condition inspection report was not completed at the beginning of the tenancy.

The Agent for the Landlord stated that a condition inspection report was completed at the end of the tenancy and that a copy of it was submitted in evidence. The Tenant stated that a condition inspection report was completed at the end of the tenancy but he contends the form of the report does not comply with the requirements set out in the *Residential Tenancy Branch Regulation*.

The Landlord is seeking compensation for lost revenue for December of 2016 on the basis that the Tenants did not give proper notice to end the tenancy prior to December 31, 2016. The Agent for the Landlord stated that the rental unit was advertised on a popular advertising website on, or about, November 23, 2016 and that the Landlord was able to find a new tenant for January 01, 2017.

The Tenant stated that they gave limited notice, in part, because the Landlord refused to give the Tenants the legal name of the Landlord and, in part, because the Landlord had not completed repairs in the rental unit. The Tenant stated that the Landlord had not rectified an on-going problem with mice and the Landlord did not repair a broken P-trap until December of 2015.

The Landlord is seeking compensation, in the amount of $120.00, for cleaning the rental unit. The Agent for the Landlord stated that additional cleaning of the rental unit was required, as depicted by photographs 3, 4, and 5 submitted by the Landlord. The Tenant stated that the rental unit was cleaned at the end of the tenancy.

The Landlord is seeking compensation, in the amount of $84.00, for cleaning the carpet in the rental unit. The Agent for the Landlord stated that the carpets were clean at the start of the tenancy and they were dirty at the end of the tenancy, as depicted in the photographs the Landlord submitted in evidence. The Landlord submitted a copy of an invoice for carpet cleaning, in the amount of $84.00.

The Tenant agreed that the photographs of the carpet that were submitted in evidence by the Landlord represent the condition of the carpet at the end of the tenancy. The Tenant stated that the carpets were in the same condition at the start of the tenancy as they were at the end of the tenancy.

The Landlord and the Tenant agree that there is a clause in the tenancy agreement that requires the Tenants to have the carpet professionally cleaned at the end of the tenancy. The Tenant stated that the carpets were not shampooed or steam cleaned during the tenancy.

The Tenants are seeking compensation arising from the presence of mice in the rental unit.

In regards to the claim regarding mice the Tenant stated that:

- the mice were first reported to the Landlord in September of 2015

- the Landlord arranged to have a pest control technician attend the rental unit on October 10, 2015 or October 11, 2015;
- the Landlord had a contractor fill several potential access points in October of 2015;
- the Tenants regularly reported the mouse problem to the Landlord;
- the Landlord again sent a pest control technician in January of 2016;
- the Tenant filled several potential access points in March or April of 2016, which appeared to temporarily resolve the problem;
- the pest control technician came again in September of 2016;
- the Tenants regularly informed the pest control technician that the problem was not resolved;
- they eventually concluded that the problem would never be resolved so they opted to end their tenancy;
- during their tenancy they caught 6 mice;
- their carpet was covered with mice feces and urine;
- they did not submit photographs of the amount of mice urine in the rental unit; and
- a contractor came to the rental unit in October of 2016 and they refused his services as they concluded that his efforts were ineffective;

In regards to the claim regarding mice the Assistant Property Manager stated that:

- the mice were first reported on September 21, 2015;
- a pest control company was sent to the rental unit on October 03, 2015;
- the pest control company was contracted to provide monthly services for three months;
- the pest control company inadvertently missed the November 2015 treatment and the Landlord made arrangements with the Tenant to have the unit treated;
- the Landlord arranged to have a contractor fills several potential access points in October and December of 2015;
- the Tenants were asked to inform the Landlord if there were continuing problems with mice;
- the Tenant did not report any further problems with mice until September 15, 2016;
- a pest control company was sent to the rental unit on September 20, 2016;
- the pest control company was contracted to provide monthly services for another three months;
- the Landlord arranged to have a contractor potential access points and to apply peppermint oil on October 21, 2016, however the Tenants refused to allow the contractor access to the rental unit;
- the photographs of the carpet submitted by the Landlord show the rental unit was not well maintained, which could have contributed to the mice problem; and
- no mice have been reported in the rental unit since new occupants moved into the rental unit.

The Landlord submitted a copy of an email, dated October 07, 2015, in which the Landlord informs the Tenants of three dates for treating the mice. In this email the Landlord asks the Tenants to inform them if the problem persists past December.

The Landlord submitted an invoice, dated October 30, 2015, which shows a contractor blocked three access points in the rental unit.

Several emails exchanged between the parties regarding the mice were submitted in evidence.

The Tenants are seeking compensation as a result of being exposed to H2S, which the Tenant stated was noxious sewer gas.

In regards to the claim regarding exposure to hydrogen sulfide the Tenant stated that:

- on July 19, 2015 the Tenants informed a former agent for the Landlord that sewer can be periodically smelled in various areas of the rental unit;
- he periodically informed the former agent of the smell after July 19, 2015, although not in writing;
- a city engineer told him that sewer gas was entering the rental unit;
- the Landlord did not respond to the initial report of the sewer smell;
- on December 15, 2015 the Tenant informed the Landlord that sewer smell was so bad in the rental unit that they were evacuating the rental unit;
- they stayed in a hotel on December 15, 2015 and December 26, 2015;
- the Landlord sent a plumber to the rental unit on December 19, 2015, who repaired a broken P-trap;
- during wet weather the smell in the rental unit could be detected every day;
- during dry weather the smell in the rental unit could be detected every second day;
- in December of 2015 he experienced a bleeding nose and had difficulty breathing; and
- he did not submit any medical evidence.

In regards to the claim regarding exposure to hydrogen sulfide the Agent for the Landlord stated that:

- on July 19, 2015 the Tenants informed a previous agent for the Landlord that sewer can be periodically smelled in various areas of the rental unit;
- she believes the previous agent for the Landlord would have sent a plumber, although she has no proof of that;
- the Landlord has no record of any reports of a sewer smell between July 19, 2015 and December 15, 2015;
- on December 15, 2015 the Tenant informed the Landlord that sewer smell was so bad in the rental unit that they were evacuating the rental unit;
- on December 16, 2015 the Landlord arranged to have the rental unit inspected by a plumber;
- on December 17, 2015 a plumber repaired a broken P-trap in this rental unit and a neighbouring rental unit; and
- the occupants of the other rental unit did not report an odour.

The Landlord submitted an email from the plumber who repaired the P-trap. In this email the plumber declared that he repaired a P-trap in this rental unit and in a neighbouring rental unit; that this is a common repair; and that he is not aware of anyone becoming sick from this type of smell.

The Landlord submitted an invoice from the plumber, which indicates he went to the rental unit on December 17, 2015.

The Tenants submitted a report on hydrogen sulfide which outlines symptoms that may be experienced at various levels of exposure.

The Tenant stated that they are seeking compensation for emergency repairs, which relate to materials they purchased to deal with the mice infestation. He stated that they purchased mouse traps, steel wool, and caulking. He stated that the Tenants submitted receipts for these purchases to the Residential Tenancy Branch, although he could not locate them in his evidence package at the time of the hearing. He stated that the Tenants did not provide these receipts to the Landlord prior to serving them as evidence for these proceedings.

Analysis:

Section 45 of the *Residential Tenancy Act (Act*) stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. To end this tenancy on November 30, 2016 in accordance with section 45 of the *Act*, the Tenants were required to give written notice of their intent to vacate on, or before, October 30, 2016.

I find that the Tenants failed to comply with section 45 of the *Act* when they failed to provide the Landlord with written notice of their intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due. I find that the late notice the Tenants did provide made it difficult, if not impossible, for the Landlord to find new tenants for the rental unit for the following month, as it prevented the Landlord from advertising the rental unit at the beginning of the month. I find that the late notice significantly contributed to a loss of rental revenue for the month of December of 2016 and I therefore find that the Tenants must compensate the Landlord for that loss of revenue, in the amount of $1,286.00.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I find that the Tenants did not have the right to end this tenancy, pursuant to section 45(3) of the *Act,* because the Landlord refused to give the Tenants the legal name of the Landlord. Although the Act does require the tenancy agreement to declare the correct legal name of the Landlord, I cannot conclude that the Landlord`s failure to provide that name was a breach of a material term of the tenancy agreement. As the Tenants had the contact information of the property management company acting on behalf of the Landlord, I cannot conclude that not having the legal name of the Landlord was a serious enough breach of the *Act* to be considered a breach of the tenancy agreement. I therefore find that any delay in obtaining the legal name of the Landlord did not give the Tenants the right to end this tenancy pursuant to section 45(3) of the *Act.*

I find that the Tenants did not have the right to end this tenancy, pursuant to section 45(3) of the *Act,* because a P-trap was not repaired until December of 2015. As this repair was completed long before the tenancy ended, any delay in this repair could not be considered grounds to end the tenancy.

I find that the Tenants did not have the right to end this tenancy, pursuant to section 45(3) of the *Act,* because of an on-going mice problem. As the mice problem allegedly began in September of 2015 and the Landlord was responding to those reports, I cannot conclude that the pest problem constituted a breach of a material term of the tenancy agreement. In the event the Tenants wished to end the tenancy due to the presence of mice, they could have done so by giving one month's notice to end the tenancy after the end of the fixed term of the tenancy.

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* requires tenants to leave a rental unit in reasonably clean condition at the end of the tenancy. On the basis of photographs 3, 4, and 5 that were submitted in evidence by the Landlord, I find that the rental unit was left in reasonably clean condition. Although those photographs establish that the oven, the top of the stove, and the sink required wiping, I am simply not satisfied that they establish a significant amount of cleaning was required. I therefore dismiss the claim for cleaning the rental unit.

On the basis of the photographs submitted in evidence and the testimony of the Agent for the Landlord I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave the carpet in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpet, which was $84.00.

In adjudicating the claim for cleaning the carpet I was influenced by the photographs submitted in evidence. I find that although it is possible that some of the marks on the carpet could be stains, much of the dirt on the carpet is consistent with dirt that accumulates over time. I therefore find that the Tenant's testimony that the carpets were in the same condition at the start of the tenancy as they were at the end of the tenancy is inconsistent with these photographs.

Residential Tenancy Branch Policy Guideline #1 suggests, in part, that tenants are generally required to steam clean or shampoo the carpets after a tenancy of one year. This policy guideline reflects the belief that most carpets require a shampoo or steam clean after one year. As the Tenant acknowledged that the carpets were not shampooed or steam cleaned during this 16 month tenancy, I find it highly unlikely that they were in the same condition at the start of the tenancy as they were at the end of the tenancy.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant. In my view, the Landlord responded reasonably and responsibly to the reports of mice in the rental unit. In reaching this conclusion, I was influenced by the undisputed evidence that shows the Landlord hired a contractor in October of 2015 and October of 2016 to address the mouse problem and that the Landlord engaged a pest

control company for two series of treatments, each of which was for a three month period. In reaching this conclusion I was further influenced by the Landlord`s submission that a contractor was also sent to the rental unit in December of 2015 to address the problem.

I find there is insufficient evidence to show that the Landlord was responsible for the mouse infestation. I am aware that mice are a common problem in British Columbia and that they can be very difficult to control. In the absence of evidence to show that the Landlord did not respond responsibly to the report of mice or that there was an infestation within the complex that the Landlord did not diligently address, I cannot conclude that the Landlord breached section 32(3) of the *Act* in regards to the mice. As there is insufficient evidence to establish that the Landlord breached the *Act* in regards to the mice, I find that the Tenants are not entitled to compensation for the inconvenience of living with the mice.

In adjudicating the issue of mice I was influenced, to some degree, by the undisputed evidence that in October of 2016 the Tenants refused access to a contractor who had been sent to address the problem. I find that this failure to cooperate with the Landlord`s attempt to resolve the problem suggests that either the problem was completely resolved by that point; that the problem with mice was not particularly significant by that point; or that the Tenants were actively preventing the Landlord from eradicating the mice.

In adjudicating the issue of mice I was influenced, to some degree, by the Tenant`s testimony that they only caught six mice during their tenancy. Given that the mice problem began in September of 2015 and was allegedly not resolved when the tenancy ended in November of 2016, I cannot conclude that there was a significant infestation.

In adjudicating the issue of mice I was further influenced by the absence of any evidence, such as photographs, that corroborate the Tenants` submission that their carpet was covered with mice feces and urine. In the absence of such corroborating evidence, I am unable to conclude that there was a significant infestation.

On the basis of the undisputed evidence I find that the Tenants reported a smell of sewer to the Landlord on July 19, 2015. As there is no evidence to dispute the Tenant's testimony that the Landlord did not respond to this report, I cannot conclude that the Landlord investigated this report. I find that the Agent for the Landlord's testimony that she believes the report would have been investigated has little evidentiary value, as her testimony is mere speculation that is not corroborated by any recorded response.

I find that there is insufficient evidence to establish that the Tenants reported a smell of sewer at any time between July 19, 2015 and December 15, 2015. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the problem was verbally reported or that refutes the Landlord's testimony that they have no record of a report.

On the basis of the undisputed evidence I find that on December 15, 2015 the Tenants reported a smell in the rental unit, which was the result of a broken P-trap.
I favour the testimony of the Agent for the Landlord, who stated the P-trap was repaired on December 17, 2015, over the testimony of the Tenant, who stated the P-trap was repaired on December 19, 2015.

Given that in December of 2015 the report of the sewer smell was determined to be the result of a broken P-trap; I find it reasonable to conclude that the sewer smell that was first reported in July of 2015 was associated to the broken P-trap. I therefore find it reasonable to conclude that the Tenants were periodically exposed to the smell of sewer between July of 2015 and December of 2015.

I find that being periodically exposed to the smell of sewer for approximately 6 months is a breach of the Tenants' right to the quiet enjoyment of the rental unit. Awarding compensation for a breach of the right to quiet enjoyment is highly subjective. After considering all of the evidence before me, I award the Tenants compensation of $600.00 for this inconvenience.

In determining that the Tenants are entitled to significant compensation for the inconvenience of the sewer smell I was influenced, in part, by the undisputed evidence that the Tenants vacated the rental unit for two days. This evidence is corroborated by an email in which the Tenants informed the Landlord they were vacating the rental unit as a result of the smell. Although the evidence shows that the Landlord responded responsibly to the problem that was reported on December 15, 2015, I find the Tenants are entitled to compensation for the inconvenience of vacating the rental unit.

Although the Tenant testified that the sewer smell was present every day during wet weather and about 50% of the time during dry weather, this is inconsistent with his email of July of 2015, in which he declares the smell is not persistent. Given the number of emails the Tenants sent to the Landlord regarding deficiencies with the rental unit, I find it difficult to believe that the Tenants would not have continued to report the problem with the smell, via email, if the sewer smell was particularly bothersome. Although the Tenants are entitled to some compensation for being periodically exposed to the smell of sewer, I cannot conclude that this periodic exposure was sufficient to warrant compensation of more than $600.00.

While I accept the undisputed evidence that the Tenant experienced a bleeding nose and had difficulty breathing in December of 2015, I find that there is insufficient evidence to establish that these medical conditions were related to the odour in the rental unit. In reaching this conclusion I was influenced, in part, by the absence of evidence from a medical practitioner that correlates the medical conditions to the rental unit. In reaching this conclusion I was further influenced by the written submission from the plumber who repaired the P-trap, who declared that he is not aware of anyone becoming sick from this type of odour. As there is insufficient evidence to establish that the odour impacted the Tenant's health, my award for compensation is not based on the Tenant's health concerns.

I find that the report on hydrogen sulfide has little evidentiary value, as there is no evidence that suggests the Tenants were exposed to levels of the gas that would result in any of the symptoms outlined in the report.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and are 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* stipulates 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.

I find that setting mouse traps and blocking potential entrance points with caulking and steel wool do not constitute emergency repairs. As these purchases were not made for "emergency repairs", I dismiss the Tenant's application to recover the cost of emergency repairs.

Conclusion:

The Landlord has established a monetary claim, in the amount of $1,470.00, which includes $1,286.00 in lost revenue, $84.00 for cleaning the carpet, and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. The Tenants established a monetary claim, in the amount of $600.00, in compensation for loss of quiet enjoyment.

After offsetting the two claims I find that the Tenants owe the Landlord $870.00. Pursuant to section 72(2) of the *Act,* I authorize the Landlord to retain the Tenants' security deposit of $625.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance $245.00. In the event the Tenants does not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 03, 2017

Residential Tenancy Branch