Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 608821 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for emergency and other repairs - Section 32;
2. An Order for the Landlord's compliance - Section 62;
3. An Order for the provision of services or facilities - Section 65;
4. An Order for a rent reduction - Section 65;
5. A Monetary Order for compensation - Section 67; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

In the Landlord's submissions the Landlord indicates that the Respondents named by the Tenant are not the Landlords and should therefore not have been named in the application. The Landlord's Agent confirms that the named Respondent KT is the owner of the company that owns the building containing the unit and that this person has acted to carry out rights and obligations under the tenancy. The Agent also confirms that the Respondent Numbered Company also carries out rights and obligations under the tenancy.

Section 1 of the Act defines "landlord" as including the owner of the rental unit, the owner's agent, or another person who, on behalf of the landlord,

> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Given the description of the actions carried out by the named Respondents I find that they are properly named in the application.

Legal Counsel for the Tenant states that they only just received the Landlord's evidence package on July 4, 2017 and that while there has been a review of the package, time was insufficient to provide rebuttal documents. The Tenant seeks to have it excluded because it was provided late. Legal Counsel indicates that if it is not excluded Legal Counsel does not require an adjournment if the Tenant is allowed to read in documents in rebuttal.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure provides that a respondent's evidence must be served on the other party as soon as possible and no less than 7 days before the hearing. As the Tenant's Legal Counsel indicates that it received the evidence package within 7 days of the hearing I find that the evidence is not late and I decline to exclude the materials. Despite the non-exclusion of the evidence and understanding that legal counsel generally might require more time, I allow the Tenant's Legal Counsel to read in any documents that may be required to rebut the evidence in the Landlord's materials.

The Tenant's claims were reviewed and the Tenant states that no emergency repairs are required and that no services or facilities are being withheld. I therefore dismiss these claims. The Tenant confirms that it seeks other repairs, compensation including a rental reduction, and the Landlord's compliance in relation to requests for repairs.

Issue(s) to be Decided

Is the Tenant entitled to an order for repairs?

IS the Tenant entitled to compensation?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to an order that the Landlord comply?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: Although there is a written tenancy agreement, neither Party provided a copy as evidence. The tenancy started in 2005. Rent of $985.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected $400.00 as a security deposit.

The Tenant states that there are outstanding repairs to a toilet that is broken and that they still await a replacement stove. The Tenant states that the Landlord was only recently made aware of the toilet repair. The Landlord states that the stove is arriving on July 13, 2017 and that the toilet will be inspected immediately following this hearing.

The Tenant states that compensation is being sought for the breach of quiet enjoyment by the Landlord that started when the property was purchased and the new owner took over. The Tenant states that almost immediately the Tenant was given a notice to end tenancy in relation to the sublet of the unit. It is noted that this notice was given to the Tenant in November 2016.

The Tenant states that the Landlord's November 2016 notice was not found to be valid and was cancelled in a Decision dated January 16, 2017. The Tenant states that the Landlord "appealed" that Decision, which was also unsuccessful. It is noted that the Tenant's use of the term "appeal" refers to an application by the Landlord for a review of the Decision. The Tenant states that despite these two decisions the Landlord

continued to persist in harassing the Tenant. The Tenant states that within a week after the “appeal decision” the Landlord served the Tenant with a “caution” again in relation to the sublet. The Tenant states that the Landlord then served another notice to end tenancy in February 2017 for the same reason as the first notice and in relation to the same sublet. The Tenant states that this notice was also found to be invalid by a finding of res judicata in the next Decision dated April 6, 2017.

The Tenant states that on December 2, 2016 a window leak was reported to the Landlord by the subtenant, as was the usual practice of the subtenant to report problems immediately to the Landlord as opposed to the Tenant. The Tenant states that the Landlord refused to acknowledge the request and that repairs were not made to the leak until May or June 2017 after the Tenant’s Legal Counsel contacted the Landlord about the requested repair.

The Tenant states that mice were discovered in the unit on May 8 and were reported to the Landlord on May 9, 2017. The Tenant states that although the Landlord attended the unit the next day and an exterminator attended on May 11, 2017 the Landlord did not eradicate the mice until recently with a final visit on July 6, 2017. The Tenant states that she has no idea if exterminator was qualified to carry out the pest control. The Tenant states that the exterminator came without any supplies and borrowed tape to close a hole. The Tenant states that the exterminator did not leave traps at first and only used duct tape. The Tenant states that the Landlord also breached her right to privacy by having taken videos of the unit in areas where there were no mice. The Tenant states that the Landlord and this person did not speak English during the visits. The Tenant states that the mice started to leave only after the subtenant took action and sought out and closed holes in the unit.

The Tenant states that as a result of the Landlord’s actions the Tenant has incurred financial losses through missing work and having to return to Canada in January 2017 for both the hearing and to look for alternate housing in case the eviction was upheld.

The Tenant states that the Landlord carried out its attempts to evict the Tenant over a period of 8 months causing the Tenant sadness and humiliation with persons texting the Tenant about the notices on the door. The Tenant states that the Landlord's repeated eviction notices were harmful to her reputation. The Tenant states that the eviction notices also stressed out the subtenant who in turn caused the Tenant extreme stress as the subtenant ended up in the hospital. The Tenant states that she felt bullied and intimidated by the Landlord's actions and felt that the Landlord was trying to wear her down. The Tenant states that the Landlord's slowness in responding to the mice resulted in damage to the Tenant's furniture and carpets. The Tenant states that with every day that went by the mice caused additional damage to the furniture. The Tenant provides photos of the furniture. The Tenant states that the furniture has not yet been replaced and that she is seeking compensation to be included in the global amount claimed of $6,500.00.

The Landlord states that there was no response to the leak until May 2017 as they were not informed by the Tenant's legal counsel until that date and that they did not have a tenancy agreement with the subtenant. The Landlord states that they responded to the report of mice and took immediate action in calling a pest control company. The Landlord states that the company inspected the unit, found droppings and placed traps with poison. The Landlord states that the mice were smart and avoided the traps. The Landlord states that the company attended the unit approximately every week between May 11 and the final visit a short time ago. The Landlord provided copies of the invoices with notations from the company. The Landlord states that they did not consider obtaining the services of a different company as they used this company before and that success after a month is a reasonable amount of time. The Landlord states that there was only one mouse in the unit and that the Tenant did not point out any damage to her belongings other than the couch when the Landlord was in the unit. The Landlord states that the photos of the damage that were sent by the Tenant were blurry and maybe included carpets. The Landlord states that he could not make out any other damage. The Landlord states that they did not follow-up on what the photos

depicted. The Landlord does not believe the couch was damaged and that the cushion on the couch that the Tenant claims is damaged can be flipped over.

The Landlord states that following the first Decision new evidence was obtained. The Landlord states that despite the consideration of this new evidence under the review application that was dismissed, the Landlord wanted to start another application with the new evidence so the Landlord served the Tenant with the second notice to end tenancy. The Landlord state that he does not believe that they were wrong in serving the second notice. The Landlord's legal counsel argues

- that the finding or res judicata on the second eviction notice was debated at the hearing and that the Landlord did submit a legal argument;
- that the Decision that made the finding of res judicata did not find that the notice was vexatious;
- that even if the Landlord did not make the window leak repair there is no evidence of any loss to the Tenant;
- that the claim for a global amount is a vague claim and more represents the Tenant's legal costs; and
- that there was no bad faith on the part of the Landlord and an award for compensation in this case would amount to punitive damages.

The Tenant's Legal Counsel sets out arguments in its written submissions and notes that the previous Decision did not consider a claim that the Landlord's act to issue the repeated notice was vexatious and that the Landlord has shown general dishonesty and lack of transparency with a pattern designed to harass and intimidate the Tenant.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 32 of the Act provides that a landlord must provide and 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. Given the Landlord's agreement for repairs, I dismiss the Tenant's claim for an order for repairs with leave to reapply should the Landlord fail to make the repairs as agreed.

The Tenant argues that the Landlord took too much time to rid the unit of rodents and that this caused greater loss to her furniture. However the Tenant did not provide any evidence of usual or reasonable times expected to eradicate rodents, such as estimates or other evidence from other pest control companies. There is no evidence that the Landlord knowingly chose a company that was not qualified to carry out the pest control. The Tenant did not provide any direct evidence of the work of the exterminator and I therefore accept the Landlord's evidence provided through the companies invoices to find that traps were set from the outset. There are no photos to show the condition of the couch and carpets prior to the report date or at the end of June 2017 to show any greater damage caused by the time taken to eradicate the rodents. The Tenant is not residing in the unit and the Tenant has not provided evidence of how the video inside the unit caused the Tenant any damages. Given the Landlord's evidence of their immediate response to obtain a pest control company, I find that the Tenant has not substantiated that the Landlord failed to act or was negligent in its actions to respond to the reported rodent infestation.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that, inter alia, makes it suitable for occupation by a tenant. Nothing in the Act sets out how or from whom a landlord must be informed when repairs are required to a rental unit and nothing stops a sub-tenant from reporting or requesting repairs to a rental unit. Given the Landlord's evidence that it did not respond to the leak reported by the subtenant until May 2017, and considering the circumstances at the time I consider this a failure of the Landlord to act in a timely manner. I note further that the repairs to the leak took a month after receiving the second decision dated April 6, 2017. I find this behavior to be an arrogant failure by the

Landlord to maintain the rental unit under the Act and a questionable failure to protect its own investment. Although there is no evidence that the lack of window repairs caused any direct loss, I do consider the Landlord's failure to act sooner to be part of a stubborn effort to remove the Tenant because of the sub-tenancy.

I consider the provision of the second notice to end tenancy to be part of the Landlord's arrogance and stubborn determination to remove the Tenant because of the sub-tenancy. As the previous Decision dated April 6, 2017 specifically dismissed the Tenant's claims for compensation I agree that the Decision did not contemplate the matter of whether the Landlord's actions to issue a second notice was vexatious or whether the Tenant was entitled to compensation for the issuance of a vexatious notice. Given the Landlord's evidence that despite being found not to have a right to open the matter of the subtenant again with the "new" evidence on review, the Landlord stubbornly issued the second notice for the same reason, I find that the Landlord did issue a vexatious notice. However, I do not consider the Landlord's actions in totality to be so great that it amounted to a campaign of harassment. Further in terms of damage or loss to the Tenant as a result of the Landlord's acts, as the Tenant did not live at the unit where the notices were being posted, I cannot accept that the posting of the second notice would foreseeably cause harm to the Tenant's reputation. Given the lack of any supporting documentation of any other damage such as harm to her health, I consider that the second notice mostly caused the Tenant to be greatly inconvenienced and highly stressed.

For the above reasons I find that the global amount claimed by the Tenant is excessive and that the Tenant has only substantiated a nominal award of **$500.00** for the Landlord's failure to repair the window leak and for the inconvenience and stress of having been issued a second baseless notice to end tenancy. As the Tenant's application has met with some success I find that the Tenant is also entitled to recovery of the filing fee for a total entitlement of **$600.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$600.00**. If necessary, this order may be filed in the 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 *Residential Tenancy Act*.

Dated: July 21, 2017

Residential Tenancy Branch