



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel two notices to end tenancy; orders for repairs and emergency repairs and a rent reduction and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

I note that the tenant listed her spouse as a tenant in this Application however, the tenancy agreements submitted by the landlord do not list the tenant's spouse as a tenant. As such, I find the tenant's spouse is not a party to this tenancy and I amend the tenant's Application to exclude the tenant's spouse.

I note that the tenant has submitted two separate Applications for Dispute Resolution that are essentially the same except that the first Application was in response to the tenant receiving a 10 Day Notice to End Tenancy for Unpaid Rent issued on May 16, 2017 and the second Application was submitted in response to a second 10 Day Notice issued on June 6, 2017.

At the beginning of the hearing the parties agreed to allow the tenancy to continue until August 31, 2017. The parties agreed to allow me to issue an order of possession to the landlord to be effective on that date. In addition, based on this agreement I order the 2 – 10 Day Notices to End Tenancy for Unpaid Rent issued on May 16, 2017 and on June 6, 2017 are cancelled.

Both parties submitted a significant volume of documentary evidence and while I have not mentioned all of the evidence submitted, I have read and considered all of the submissions made by both parties in preparation for this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to have the landlord complete repairs and emergency repairs; to a rent reduction; to a monetary order for compensation for the landlord failing to complete repairs within a reasonable time and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 33, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted that the tenancy began on November 1, 2013 as a 1 year fixed term and has continued on a series of repeated fixed term tenancies. The landlord submitted into evidence a copy the most recent tenancy agreement signed by the parties on August 2, 2016.

The tenancy agreement submitted states the tenancy began on August 1, 2016 for a one year fixed term ending on July 31, 2017 for the monthly rent of \$2,200.00 due on the 1st of each month with a security deposit of \$1,125.00 paid on October 29, 2013.

The tenant outlined the items she was seeking repairs and emergency repairs for in a letter dated May 10, 2017 to the landlord. The list of repairs includes the following items:

- The heat on the main level;
- Water damage causing mould to grow despite repeated requests;
- Clothes dryer being broken for two months;
- Old toilet not suitable for use;
- Shower not suitable for use;
- Broken glass French doors;
- Broken fence due to a storm (in another document the tenant attributes this damage to an earthquake);
- The landlord failed to check on the property during a year long absence when the tenant was out of the country;
- Front door not shutting properly; and
- Hole in the ceiling from water damage.

The tenant submits that she has been requesting a number of these repairs for a long time and the landlord has failed to make these repairs. She submits that the landlord

has refused to make these repairs because the owner of the property is refusing to provide funds to do so.

The tenant seeks compensation in the amount of \$10,000.00 for the landlord's failure to make these repairs. The tenant did not provide any explanation other than this is the amount she felt the value of the tenancy was reduced by.

The landlord submitted the following responses:

- Had not heard any complaints about the heat until they received the hearing package;
- The water damage that has led to mould was not initially reported but once it was reported the landlord responded the following day;
- In regard to the dryer the landlord states that the tenant did not respond in a timely fashion to provide the dimensions and then when they could order the new dryer it was on back order;
- They were notified by the tenant that a toilet and shower were not working until it was discovered at an inspection;
- The landlord acknowledges being made aware of the cracked glass in the French door in March 2016 but because it was only cracked and posed no danger to anyone they did not fix it. They state they were informed of the change in May 2017;
- No hot water was reported in May 2017 and fixed immediately;
- They attempted to repair the dishwasher and when the repair didn't work they replaced it;
- The landlord acknowledged that they were made aware of the broken fence in March 2016 and that it had been repaired by the neighbour but later found it to be broken again when they completed a subsequent inspection;
- The property was inspected several times when the tenant was absent for a year;
- The swelling of the door is a result of the ongoing water issues and the exterior deck and deck flashing. The landlord submits they had not been informed of this damage in a timely fashion; and
- They had not received any reports of water damage to the ceiling until April 13, 2017.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

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 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, or
- The electrical systems.

In regard to the repairs and emergency repairs sought by the tenant, I am satisfied the landlord is aware of the items requiring repair. I am not satisfied that the tenant has established that she reported issues to the landlord in a timely fashion or that the landlord took an unreasonable length of time to make repairs.

While the tenant has provided a number of text messages I note that most of these messages are dated on or after mid-April 2017. As such, I find the tenant has failed to establish that she had reported any of these problems that the landlord has failed to repair prior to April 2017 with the exception of the items the landlord acknowledged they were made aware of, specifically the broken French door and fence.

As the tenancy is ending I will not order the landlord to make any repairs or emergency repairs at this time. However, in considering the tenant's claim for compensation and rent reduction I find the tenant has failed to establish, for the most part, that the landlord has failed to comply with their obligations under the *Act*, regulation or tenancy agreement for repairing the property, services and facilities.

I find there is one exception to this, specifically the landlord replacing the dryer. I find it was unreasonable to require the tenant to go without a dryer for a couple of months. The landlord has provided no information as to why they did not attempt to find a

different supplier or provide the tenant with a “loaner” dryer while waiting for the replacement.

As there is no evidence in most of the other repairs sought that the tenant reported the problems, I find the landlord cannot be held accountable to compensate the tenant for the repairs not being made. For all other repairs, I find the landlord acted in an appropriate time frame once repairs were requested.

In regard to the French doors, however, I find the landlord was aware that a pane of glass was cracked. I find that it was reasonable, originally, to not affect any repair as I concur with the landlord’s assessment that the cracked did not pose any danger to the tenant or her family.

I find that despite the submissions of both parties regarding the tenant’s assertion that the landlord did not check on the property at all when she was out of the country, I find there is nothing in the *Act*, regulation or tenancy agreement that requires the landlord to check the property or deal with a break in that occurs when the tenant is away from the property.

While the tenant asserts the break in was made by the occupant of the lower rental unit she has provided no evidence to support her assertion or why that would mean that the landlord would be responsible to compensate her for the break in or failure to check on the residential property.

As the tenant has provided no indication of how she determined her claim is valued at \$10,000.00 and in conjunction with my findings, I find the tenant is entitled only to compensation for the delay in obtaining a new dryer. However, since the tenant has failed to provide any breakdown of how she determined the value of her claim, I grant the tenant a nominal award of \$200.00, pursuant to Residential Tenancy Policy Guideline 16.

Guideline 16 states an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward. Specifically an arbitrator may issue “nominal damages” which are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Based on the above, I dismiss the tenant’s claim for a rent reduction.

Conclusion

As noted above, I grant the landlord an order of possession effective **August 31, 2017 after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$200.00** as compensation for the loss of use of the clothes dryer during the tenancy.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: August 04, 2017

Residential Tenancy Branch