



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

RP, RR, OLC, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking an order that the landlord make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties also each called one witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing the landlord agreed to make repairs to the moldy, squishy wall in the bathroom, repair or replace the bedroom flooring, including a transition strip and baseboards, within a week of today's date, and I so order.

Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of a portion of rent paid due to devaluation of the tenancy?

Background and Evidence

The tenant testified that this fixed term tenancy began on April 1, 2017 and reverts to a month to month tenancy after March 31, 2018, and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the 1st day of each month and there are no rental arrears. On March 1, 2017 the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a one bedroom apartment in a strata apartment complex and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the tenant viewed the rental unit twice prior to the commencement of the tenancy, and chose this particular apartment because of the balcony. The tenant would not have rented this rental unit if it didn't have a balcony.

When the tenant arrived on April 1, 2017 the rental unit was not clean, and the landlord hired cleaners for 2 hours. The oven door was also broken and it took 3 months to replace it. The tenant completed a move-in condition inspection report but the landlord wouldn't sign it. The landlord discounted one month of rent for failing to provide a washer, dryer and bathroom fan.

On May 1, 2017 construction started on the outside of the rental complex without any notice to or knowledge by the tenant prior to the start date of the tenancy agreement. The balcony has been removed and the door is shut and only opens about 2 inches; nailed with a board on the outside and no locks. It's also covered by scaffolding so there is no view, and with scaffolding it's not secure and allows access from the outside. The east window is not sealed shut and the rental unit is losing heat. The same applies to the kitchen window, which is covered with plastic catching dirt and debris falling from the ceiling, causing the tenant to have to vacuum daily.

The tenant also testified that the destruction of the balcony disturbed ants which were all over the kitchen counter, stove, sink, cupboards, and other areas of the rental unit for 2 weeks, but that matter was resolved by the landlord. Wasps were also disturbed which entered the rental unit and because the doors and windows don't open, there was no escape. The kitchen window is the only one that opens, so there is no air-flow.

The bedroom window inside is ripped apart with plastic over it and 2 outlets are missing. The baseboard heater was disconnected when construction started and it has not been reconnected, and it's getting cold.

The tenant has been required to keep furniture away from walls since the beginning of construction and it's all in the centre of the rooms.

The tenant has also provided numerous photographs of the rental unit and outside of the rental complex as evidence for this hearing on a digital flash drive.

The landlord has given the tenant notice prior to construction workers entered when the landlord is given notice, and the tenant assumed that would be on Mondays through Fridays during business hours, but they also worked some weekends and have entered the rental unit while the tenant was not at home and without any notice. The tenant has found screws and such inside the rental unit when returning home.

Construction stopped at the beginning of September, 2017 but the job is not finished, and the tenant is not sure when the workers are returning.

The tenant claims \$250.00 per month from the beginning of construction in May, 2017 until the work is finished; \$300.00 per month for having no balcony for the same time period and \$50.00 per month for 3 months of having a broken oven.

The tenant's witness testified that the witness was present when the tenant paid the security deposit and there was no mention of up-coming construction. The witness did not look at the rental unit with the same detail as the tenant or in the bedroom, but it was not under construction at that time.

The witness also testified that it is cold in the rental unit. Windows are covered in plastic and furniture is in the centre of the rooms.

The landlord testified that he showed 2 rental units to several applicants telling them that construction would be starting eventually. The tenant moved in and then said it was not up to her liking, and the landlord told the tenant it was rented as-is. The landlord repeated that at the first and second showings. The landlord and his business partner both told the tenant the day the tenancy agreement was signed that construction would be starting.

The landlord referred to an email in the tenant's evidence package dated April 2, 2017 about hiring a maid, and that the tenant didn't like the way it had been cleaned, and the balcony was dirty. The landlord's reply was that the balcony would be cleaned once construction was completed, so the tenant knew about construction starting.

The landlord didn't sign the move-in condition inspection report because of construction starting. The landlord has agreed to make repairs but cannot replace the rotted wood in the living room near the balcony until the construction is completed to the balcony.

The landlord contacted the strata about ants and wasps and they sent an exterminator twice. The second time was for the wasps but the landlord couldn't contact the tenant to let the exterminator in, so the landlord didn't do anything and it wasn't mentioned again by the tenant.

The landlord also contacted the strata about debris in the bedroom, and the strata contacted the construction company. The landlord also talked to the construction fellow about cleaning up after themselves and giving notice to enter. The strata gave the landlord notice once, and the landlord gave the tenant notice when the construction workers went in to clean up. The landlord was doing his part.

The landlord also testified that he told the tenant this rental unit was not suitable for the tenant and offered to pay movers and told the tenant she could move out at any time with 30 days notice and without penalty.

The landlord's witness is the landlord's business partner, but is not named as a party in this hearing, and testified that he showed the rental unit to the tenant prior to the tenancy and advised her of up-coming construction. The walk-through took about 10 minutes and the landlord explained what construction was planned.

Other repairs were required, such as the carpet in the bedroom needed to be replaced, as well as the oven, washer, dryer, toilet and fan in the bathroom. The tenant seemed anxious to rent and arrived for a second viewing, which was when the tenancy agreement was signed. Again the tenant was told about up-coming construction; that windows and balconies were going to be replaced, but the landlord didn't know when.

Analysis

Firstly, the landlord testified that the flooring near the balcony cannot reasonably be replaced until the balcony work is completed, and I accept that. I order the landlord to make that repair within one week after the construction to windows and the balcony are completed.

Where a party makes a monetary claim against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

The tenant claims \$50.00 per month for 3 months of having no oven. The landlord didn't explain fully why it took so long to replace a stove, and I find that the amount is reasonable, and I grant the tenant a monetary order for \$150.00.

A landlord is required to maintain the rental unit, but construction and repairs are often necessary throughout a tenancy. Whether or not the tenant knew of the repairs planned prior to move-in day isn't agreed but I don't see it as crucial to either party. The landlord testified that the tenant accepted the tenancy "as-is" however the *Residential Tenancy Act* states that a landlord must maintain the rental unit even if the tenant knew of such a breach when the tenancy started.

The question before me is to what extent the tenancy has been and will be devalued by the construction. The tenant claims \$250.00 per month for covered windows and from debris falling, as well as \$300.00 per month for having no balcony. That is \$550.00 per month, almost half of the rent payable, and \$550.00 per month until the construction is completed, but no one knows when that will be.

I have reviewed the digital evidence provided by the tenant and I agree that it appears to be inconvenient, messy and is not what the tenant is paying for. The tenant has made two claims for the same construction project, and I find that one claim is warranted and one third of the rent payable under the tenancy agreement has been established. I order that the landlord reimburse the tenant the sum of \$400.00 for each of the months of May through December, 2017, or \$3,200.00. I further order that rent be reduced by \$400.00 per month commencing with January, 2018 and continuing until the construction to the windows and balcony are completed.

I am not satisfied that the tenant has established that the landlord should be ordered to comply with the *Act* or the tenancy agreement. The parties both agree that the landlord has given notice to the tenant when contractors need to access the rental unit when the landlord is notified by contractors or the strata. The landlord is well aware of the requirement to give notice, and it would be simple for the tenant to put up a "Do Not Enter" sign on the balcony door to alert contractors that they are not welcome to enter unless allowed in by the tenant.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee.

I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$3,450.00 in total (\$150.00 + \$3,200.00 + \$100.00 filing fee), and I order that the tenant may reduce rent for future months until that sum is realized or may otherwise recover it.

Conclusion

For the reasons set out above, and by consent, I hereby order the landlord to make repairs to the moldy, squishy wall in the bathroom, repair or replace the bedroom flooring, including a

transition strip and baseboards, within one week from November 30, 2017, the date of the hearing.

I further order the landlord to repair the floor near the balcony within one week after construction on the balconies is completed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,450.00 and I order that the tenant be permitted to reduce rent for future months until that sum is recovered, or may otherwise recover it.

I further order that rent be reduced by \$400.00 per month commencing with January, 2018 and continuing until the construction to the windows and balcony are completed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

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: December 05, 2017

Residential Tenancy Branch