



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, OLC, MNDC, FF

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 20, 2017, wherein the Tenant sought the following Orders:

- an Order that the Landlord:
 - comply with the *Residential Tenancy Act* (the "Act", the *Regulation*, or the tenancy agreement;
 - make repairs to the rental unit; and,
 - make emergency repairs to the rental unit.
- a Monetary Order for money owed or compensation for damage or loss under the *residential Tenancy Act*, the *Regulation*, or the tenancy agreement; and,
- recovery of the filing fee.

The hearing was originally scheduled for January 16, 2018. By Interim Decision dated January 16, 2018 this matter was adjourned to February 28, 2018.

At the time of the hearing on February 28, 2018 the tenancy had come to an end. As such, the Tenant's request for a repair order was no longer relevant. Therefore, only the Tenant's monetary claim for \$35,000.00 was dealt with at the hearing before me.

The hearings occurred by teleconference. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the

respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation in the amount of \$35,000.00 from the Landlord?

Background and Evidence

In support of her claim, the Tenant, T.C., testified as follows. She stated that the tenancy began May 1, 2014; monthly rent was initially paid in the amount of \$1,100.00; and, at the time she applied for dispute resolution rent was payable in the amount of \$1,202.00.

The Tenant submitted a handwritten document wherein she detailed her request for compensation in the amount of \$35,000.00. In this document, she set out the amount of rent paid per year as follows:

1st year – $1100 \times 12 = 13,200.00$
2nd year – $1130 \times 12 = 13,560.00$
3rd year – $1160 \times 12 = 13,920.00$
7 months – $1202 \times 12 = 8,414.00$
Total amount for 3 years 7 months 49,094.00

The Tenant confirmed at the hearing that the final annual calculation should have been for 6, rather than 7 months, such that the total paid for that year was \$7,212.00 such that the total paid was \$47,892.00.

As set out in written submissions, the basis of the Tenant's compensation claim is her submission that she should be compensated the full amount of rent paid for each room, or feature of the home, she claims was impacted by the Landlord's failure to repair and maintain the property.

In determining the amount claimed she averaged the amount of rent paid during the tenancy, divided the amount by the number of rooms and came to the figure of \$171.71 per month per room.

The Tenant then goes on to claim \$171.71 per month in compensation as follows;

- 15 months for leaks in the bedroom ceiling = \$2,575.65;
- 15 months for leaks in the hallway ceiling = \$2,575.65;
- 15 months for leaks in the bathroom ceiling = \$2,575.65;
- 5 months due to leaking hot water in the bathroom = \$858.55;
- 15 months due to a cracked and “falling apart” shower liner = \$2,575.65;
- 15 months due to cracked linoleum in the bathroom = \$2,575.65;
- 15 months for leaks in the kitchen ceiling = \$2,575.65;
- 7 months for a leaking kitchen faucet = \$1,201.92;
- 14 months for holes and leaks in the bathroom window = \$2,403.94;
- 10 months for lack of an entrance door step = \$1,717.10;
- 11 months for the presence of a for sale sign in the back yard = \$1,888.81;
- 15 months for broken and “non-functioning” eaves trough = \$2,575.65;
- 15 months for loss of use of the front yard due to lack of downspouts = \$2,575.65; and,
- 15 months for loss of use and or loss of enjoyment of the front door = \$2,575.65

In terms of the above, the Tenant provided the following additional testimony.

The Tenant stated that the bedroom for which the Tenant claimed compensation was her 26 year old daughter's bedroom. She stated that her daughter moved out in November of 2016 due to the leaks after which the room was used for storage.

The Tenant stated that the main hallway which leads into the bedroom, bathroom and kitchen also had a leak; she claimed that there were two buckets in the hallway gathering the water.

The Tenant confirmed the rental unit had only one bathroom. She claimed that there were three leaks in the bathroom: one right above the toilet, one from the light fixture and one in the corner.

The Tenant claimed that from September 2016 to February 2017 the bathroom shower and bathtub could be used “very seldom-ly”. She claimed that she and her husband were showering at her friends' home, T.B. during this time period. She stated that T.B. lived four blocks away. The Tenant also stated that the bathroom shower liner was cracked and falling apart and nails were protruding through the linoleum floor which she also claimed was sinking. The Tenant also stated that the bathroom window had holes and was taped to prevent air leaks.

The Tenant also claimed that the kitchen ceiling was leaking in two separate places. She stated that one leak was above the kitchen sink and one was above the kitchen table.

The Tenant further stated that the kitchen sink faucet was broken and continuously leaked water.

The Tenant claimed total loss of use of the entrance doorstep as she stated there was no handrail. She confirmed there were only two steps to the door. The Tenant confirmed that she did not have any information to support her claim that the stairs required a hand rail.

The Tenant also claimed loss of use of the backyard due to the placement of a "For Sale" sign. She stated that she could not have her family out there to enjoy the backyard or put her pool up.

The Tenant also sought compensation for loss of use and enjoyment of the eaves trough. She stated that they leaked and as such when you walked into the house you walked through a "wall of rain". The Tenant also claimed that the lack of eaves troughs created puddles in the front yard and as such she claimed for loss of use and enjoyment of the front yard.

The Tenant also claimed for loss of use or enjoyment of the front door. The Tenant stated that there was a 2" gap between the door and the floor. She stated that she had to put a towel there to block the cold. The Tenant also stated that the window is right beside the front door and as such someone could have broken the window and entered the rental unit.

The Tenant also sought compensation for loss of enjoyment and use of the fence. The Tenant stated that the Landlord used a bobcat to clear bushes and removed the fence. She stated that she no longer had any privacy as a result of the fence being removed.

The Tenant also sought compensation for loss of use of the furnace as she claimed that they did not use it because the furnace was not inspected or serviced and she believed it was not usable and she "didn't trust it".

The Tenant also claimed compensation for loss of use of the backdoor claiming that she was never provided any keys to the door. The Tenant stated that she had two dogs and

her dogs went into the backyard. She also stated they used the backdoor to get to the backyard.

The Tenant also claimed that the baseboard heaters only heated up to a point and “weren’t very warm” and as a result they used their own stand up heaters.

The Tenant confirmed that she did not pay the \$1,202.00 in rent for November 2017, December 2017, January 2018, and February 2018 despite residing in the property for those months. In total she confirmed that she did not pay \$4,808.00. The Tenant claimed that she received moved out by February 16, 2018.

In terms of repairs, the Tenant stated that the Landlord bought two rolls of tar paper and nailed them to the roof, but the tar paper was ripped and torn and the roof continued to leak. She stated that the tar paper didn’t really fix the problem.

The Tenant stated that the Landlord replaced the pipes in the bathroom in February of 2016.

The Tenant confirmed that the Landlord did not repair the kitchen sink faucet.

The Tenant claimed that she brought the requested repairs to the Landlord’s attention in September of 2016.

In response to the Tenant’s claims the Landlord testified as follows. He stated that the Tenant started making complaints about the rental unit when he listed the property for sale approximately eight months to a year ago as well as after he issued a 2 Month Notice to End Tenancy for Landlord’s Use.

He confirmed that the Tenant complained that the roof was leaking in September of 2016. The Landlord stated that he has owned forty houses in his lifetime and has never seen anything like this. He stated that when the Tenant complained he went to the rental unit and saw that there was evidence of water on the ceiling but the paper tiles were not saturated with water. He stated that he believed the Tenant had simply thrown water on the ceiling to make it appear as though it was leaking.

The Landlord also stated that despite his belief that the roof was not leaking, he attended to a roof repair. He further stated that at no time while he was at the rental unit did he see evidence of water leaking in any of the rooms nor did he see buckets

collecting water as alleged by the Tenant. He also stated that had there been leaking as alleged, the insulation would also be saturated, yet none of the insulation was wet.

The Landlord confirmed that at one point in time the Tenant informed him that she could not use the shower. He stated that when she complained he replaced the taps.

The Landlord stated that the bathroom floor was fine and there were no nails on the floor as alleged. He also confirmed that the tile is glued, not nailed. He further noted that the subfloor is screwed, not nailed and the tiles were glued, not nailed.

The Landlord stated that he replaced the rings on the kitchen faucet when the Tenant complained it was leaking.

The Landlord noted that any water leakage comes out of his pocket as he pays the water. He noted that it was to his benefit to attend to such issues and as such he promptly dealt with them.

The Landlord stated that the Tenant's claim about "holes in the bathroom window" was a "new one for him" as she had never brought this to his attention before giving her testimony.

The Landlord stated that to his knowledge two steps to an entrance way do not require a handrail and to his knowledge four feet and higher requires a hand rail.

The Landlord stated that the "For Sale" sign was hanging up 30 feet above the ground such that it would not have impacted the use of the back yard. He stated that someone cut the ¼ inch cable such that the wires were hanging on one side. He noted that when the sign was taken down, the Tenant's husband used his tool to cut the cable such that he suspects the Tenant's husband was the one who cut it causing it to "flap in the wind".

The Landlord noted that when the tenancy started the parties completed a move in condition inspection report wherein the condition of the rental unit was noted as good.

In terms of the Tenant's claim that the front door was not secure the Landlord stated that the Tenant, D.R. and his son had a fight and broke the window by the front door. The Landlord said that D.R. replaced the glass but the glass was too small.

In response to the Tenant's claim that the fence was removed at the front of the house, not the back as the Tenant alleges. He stated that the backyard is fully fenced with an old fence, contrary to the Tenant's allegations.

The Landlord confirmed that the house came with an old gas furnace and old electrical baseboards. He stated that the Tenant did not use the gas furnace as she felt it was more economical to use space heater. The Landlord stated that the Tenant never told him that the baseboard heaters were not working, and had she informed him of this he would have attended to the repair.

The Landlord stated that the last time he received rent from the Tenant was \$1,202.00 on October 17, 2017. The Tenant failed to pay rent for November 2017, December 2017, January 2018, or February 2018 such that they owe \$4,808.00. He suggested that the Tenant was only making this monetary claim to offset the amount she owed for rent.

The Landlord also confirmed that the Tenant moved from the rental unit. He stated that the Order of Possession was emailed to him on February 8, 2018 after which he and a witness went to the rental unit and served the Order of Possession on the Tenant on February 10, 2018. The Landlord stated that he observed the Tenant moved from the rental unit on February 26, 2018.

The Landlord also noted that when they performed the move out inspection, the Tenant agreed that everything was fine.

The Landlord also stated that since the tenancy ended it has been raining constantly. He noted that there has not been a drop of water in the rental unit since they moved out.

At the conclusion of the hearing the Tenant provided her forwarding address to the landlord for the purposes of return of her security deposit. The Landlord confirmed that the rental unit was significantly damaged by the Tenants and that he intends to pursue monetary compensation for damage as well as unpaid rent. The Landlord was informed he had 15 days from the date of the hearing in which to make his application or return the funds pursuant to section 38(1) of the *Act*.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find that the Tenant's Application for monetary compensation in the amount of \$35,000.00 should be dismissed. My reasons follow.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenant has the burden of proof to prove their claim.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

- 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.

As a Tenant is entitled to exclusive possession of the rental unit pursuant to section 28 of the *Act*, a Tenant is responsible for informing the Landlord of any required repairs. A Landlord cannot be expected to make repairs if they are not informed by the Tenant that they are required.

The Tenant failed to submit any evidence which would support a finding that she informed the Landlord in writing of the numerous deficiencies she now claims plagued her tenancy.

Submitted in evidence was a copy of the Move-in Condition Inspection Report in which the rental unit is noted as in "Good" condition. The Tenant signed the report confirming the contents to be true. Notably, there are no references to the deficiencies claimed by the Tenant in her Application.

The evidence submitted by the Landlord shows that he attended to repairs and maintenance of the rental unit. He submitted receipts and invoices for these repairs in evidence.

The Tenant submitted videos and audio recordings of her discussions with the Landlord regarding the condition of the roof, purportedly taken October 20, 2016. In one such digital file, the Landlord informs the Tenant that the roof is new and that there are unexplained issues with the roof causing leaking in her daughter's room. During the hearing the Tenant testified that she believed the neighbours were "shooting at the roof". This is an unusual claim, but one which appears to have been responded to by the Landlord as he attended to repairs to the roof.

The Tenant also submitted a video of water dripping from a light fixture, which she indicated was in the bathroom. Although the Tenant claimed that many other rooms in the rental unit were impacted by the leaking roof, she did not submit any further documentary evidence, such as photos, to support this. The Landlord testified that the ceiling material and insulation was not saturated as would be the case if the roof was leaking in the bathroom. He postulated that the Tenants had thrown water on the ceiling prior to taking the video, as since the tenancy ended it had been raining constantly and no leaking has been observed. I am unable to reconcile the discrepancy in the parties' testimony in this regard. While conflicting testimony is often present in hearings of this nature, where the parties' version of events conflicts, and without further documentary evidence to support one version or the other, the party who bears the burden of proving their claim has failed.

The Tenant submitted a video showing water draining from the eaves trough during considerable rain. While the purpose of an eaves trough is to direct water to a downspout, it is not uncommon for eaves troughs to overfill during heavy rain. The rental unit is in the lower mainland which is noted for such rain. I am unable, based on the evidence before me to find that the eaves troughs were ineffective.

The Tenant claimed that the backyard was not usable due to the presence of a "For Sale" sign. She provided video of the sign, which appears to be a thin plastic material held up by wire. While the video shows the sign has fallen, it appears to only impact a very small portion of the yard, near the border of the property. In another video provided by the Tenant the sign is seen flapping above an adult person mowing the lawn. The sign appeared to be several feet (perhaps as much as 10 feet) above the person mowing the lawn. While potentially unsightly, the videos do not support a finding that the yard was unusable due to the presence of the sign.

Where the evidence of the Tenant and the Landlord conflicts I prefer the evidence of the Landlord. I found him to be forthright and honest, responsive to my questions and detailed in his responses. I also accept his testimony and evidence that when repairs were requested by the Tenant, he attended to those repairs.

As previously noted, the Tenant bears the burden of proving her claim on a balance of probabilities. I find that she has failed to meet this burden and I therefore dismiss her claim.

I find that the Tenant has failed to prove that she suffered a loss as a result of the actions or neglect of the Landlord in contravention of the *Act* or the tenancy agreement. I also find her calculation, of simply dividing the average rent paid by the number of rooms, to be an inaccurate and grossly inflated manner of calculating the amount required to compensate her for any alleged losses. Further, I find she failed to inform the Landlord in writing of her concerns, and thereby failed to follow section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. For these reasons I dismiss her claim.

Conclusion

The Tenant's claim is 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: March 23, 2018

Residential Tenancy Branch