



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1079274 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC OPL CNC CNL LAT OLC PSF RP MNDC FF

Introduction

This hearing dealt with applications from the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Cause or an Order of Possession for Landlord's Use both pursuant to section 55; as well as authorization to recover the filing fee for this application pursuant to section 72.

The tenant applied pursuant to the *Act* for: cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 and cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49. The tenant also applied for: an order requiring the landlord to comply with the *Act* pursuant to section 62; an order that the landlord provide facilities required by law pursuant to section 65; an order that the landlord make repairs pursuant to section 33; and an order to set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing. The tenant was assisted by a support person. Two representatives attended as the landlord. Both parties were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. The tenant confirmed receipt of the landlord's 2 Month Notice on January 27, 2018 and confirmed receipt of the landlord's 1 Month Notice on February 9, 2018. Both parties confirmed receipt of the other party's Application for Dispute Resolution package and evidence.

Issue(s) to be Decided

Should the landlord's 1 Month and/or 2 Month Notice to End Tenancy be cancelled or is the landlord entitled to an Order of Possession for Cause or for Landlord's Use?

Is the landlord entitled to recover the filing fee for this application from the tenant?

If the tenancy continues, is the tenant entitled to any of the following orders:

- an order requiring the landlord to comply with the *Act* regarding entry to the rental unit and the to provide sufficient notice to enter
- an order that the landlord provide laundry facilities required by law
- an order that the landlord make repairs to the rental unit
- an order to set conditions on the landlord's right to enter the rental unit.

Is the tenant entitled to a monetary order for damages totalling \$34, 993.58?

Background and Evidence

This tenant has lived in the rental unit since July 2005. After the current landlords purchased the premises, the tenancy agreement continued on a month to month basis. A copy of the written residential tenancy agreement was submitted as evidence at this hearing. No amended or updated tenancy agreement was signed when the current landlords took over. The parties agreed that the current rental amount of \$751.83 is payable on the 1st of each month. The landlord continues to hold a \$275.00 security deposit paid at the outset of this tenancy (July 1, 2005).

On January 27, 201, the landlord issued a 2 Month Notice for Landlord's Use. The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reasons for seeking an end to this tenancy: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The landlord DD testified that the rental unit has not been repaired or updated since some time in the decade of 1970.

The landlord testified that the tenant smokes cigarettes in the rental unit and that, based on the smoking and the age of the building, he must complete a plumbing upgrade to all unit (bath & kitchen particularly). The landlords both testified that the residential building was likely more than 50 years old and that the rental unit had not been repaired or updated since the 1970's.

The landlord acknowledged that, once the rental unit is vacant, he might undertake further upgrades to the unit. He also testified that he anticipates more repair related issues to arise once the walls are opened up for plumbing work. The landlord testified

that he would also have to address the bed bugs in the tenant's rental unit as it has continued to get worse. He testified that, in his own experience as a licensed contractor and based on estimates, the repairs and plumbing replacement as well as a thorough eradication will take a minimum of 2 months.

The landlord stated that he was a contractor. He provided testimony that the rental unit must be vacant so that they are able to repair the interior plumbing of the rental unit, re-finish and make repairs in the bathroom and kitchen. The landlord testified that, in their small community, other accommodations for the tenant during the course of the repairs to the unit would cost a minimum of \$100.00 per night and therefore the cost is prohibitive (\$3000.00 per month for a minimum of 2 months).

The landlords testified that (landlord's use) in January 2018, they became aware that one of the tenant's neighbours had bed bugs in their rental unit. As a result, the landlords conducted an inspection of the surrounding rental units to the infested unit. The landlords both testified that all of the occupants let them in to their units to inspect and spray to rid the units of bed bugs. However, when the landlords approached the tenant, she questioned the type of product that the landlords intended to use, worrying that it was not safe for her and generally indicating that she was not comfortable with agreeing to the bed bug spraying at that time. The landlords testified that the tenant from entering her rental unit except on rare occasions has prohibited them.

On February 6, 2018, the landlords provided a 24 hour notice to enter the rental unit to the tenant. The landlords testified that, on February 7, 2017, when they attempted to enter the rental unit, the tenant refused to allow them into the unit. The landlords described several attempts to address the bed bug issue by providing notices to enter to the tenant but she repeatedly refused them or simply did not answer the door. The tenant testified that she does not feel safe allowing the landlord into her rental unit and therefore, she often does not answer the door or want to let the landlords into her unit. She stated that, when the new, current landlords took over, she thought that the caretaker had accessed her rental unit. She was unable to indicate a date or any details about the alleged intrusion other than to say it appeared someone had tampered with her lock. The landlords issued a 1 Month Notice to End Tenancy on February 9, 2018 on the grounds that the Tenant has put the landlord's property at significant risk.

The landlords testified that the pest control company had told them they needed to treat all of the units surrounding the infested unit in order to eliminate bed bugs within the

rental unit. Otherwise, they were told, the bed bugs will move and continue to populate. The landlords testified that the bed bug problem was growing worse and word of this problem (in their small community) is affecting the value of their rental property and making the tenant's neighbours very uncomfortable. Landlord DD testified that the reputation of the building in their small community was being tarnished because they were unable to address the bed bug problem in the building.

The tenant testified that, when she refused treatment for bedbugs, it was because she wanted to ensure that the pesticide was not problematic for her health. The tenant testified that she conducted some research on bedbugs and sprays at the request of the landlord. She testified that the landlords were the ones who delayed the spraying process because, on one occasion, when the landlord attended to spray her rental unit, she asked him to come back later and he did not.

The tenant testified that the landlord never provides her with sufficient notice to enter the unit. She testified that the landlord usually gives 24-48 hours' notice and it is simply enough time for her to get out for the day. A portion of the tenant's application is a request that the landlord be ordered to spray her unit with the same spray that he originally offered. The tenant stated that she needed an order as they have not returned recently to address the issue. As well, the tenant seeks an order regarding the amount of notice that she requires before she can allow the landlord to enter. She requested that the landlord be required to provide more notice than is required under the Act because it can be difficult for her to arrange to be out of the unit for health and monetary reasons.

The tenant made her original application on February 5, 2018 – before the expiry of the timeframe to make an application to cancel the 1 Month Notice. The tenant then amended her application to include cancellation of the 2 Month Notice to End Tenancy issued by the landlord on February 9, 2018.

The tenant testified that the landlord does not like the way her the way she communicates and therefore he is trying to get rid of her. With respect to the pesticides, that the landlord intended to use in her rental unit, the tenant testified that she requires assurances in advance to be able to feel safe with the product the landlords was using. She testified that she never refused to give the landlord access: she just wanted more time and felt uncomfortable with him or others being inside the rental unit.

The tenant applied to have a repair and maintenance number provided to her in accordance with the Act. The landlord responded that all of his contact information,

including a number for emergencies is included within the tenancy agreement. The landlord provided undisputed testimony that the tenant has had his phone number since the outset of their ownership of the property.

The tenant requested that apartment door numbers be put on the doors in the residential premises because it is difficult for people to know which door to come to. The landlord testified that the numbers are not on the doors for the security of the tenants, that there has never been any numbers on the door but there are identifying signs in the hallways.

The tenant also testified that she requests a variety of repairs including but not limited to;

- re-caulking the linoleum floors in the unit;
- purchase of a new refrigerator;
- painting the rental unit;
- new locks on the balcony doors;
- the roof to be fixed;
- mold in the residential premises to be addressed; and
- walkway/entrance repaired.

Not all of the items listed above were requested within the tenant's written application and she was unable to provide evidence of previous written requests regarding repair or replacement of the items above. With respect to the floors, the refrigerator, the painting, the balcony door locks, the landlord testified that the tenant's rental unit has linoleum that is old but functional; the refrigerator is functional; that the tenant has been advised that she can paint the rental unit if she wishes to do so; that the patio doors have locks; and the roof has been fixed. The landlord testified that this is the first time the tenant has raised the issue of mold in the rental unit.

The tenant also requested to be compensated for a variety of items she has purchased for the property including;

Item	Amount
New toilet seat purchased	\$24.65
2 Months' rent for loss of quiet enjoyment	1503.66
5% Rent reduction for roof repair noise/water from August 2017 to April 2018	375.90
7-10 days for effects on breathing after bed bug spray in rental unit	187.50

Photocopying, mailing and other filing expenses	314.00
Time spent researching pest control for the landlord	170.25
Cost of tenant's own bed bug treatment to unit	235.35
Aggravated damages for poisoning by the landlord	21,000.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Tenant	\$23,911.31

The tenant testified that she needed

a new toilet seat as the old seat was broken. The landlord provided testimony, confirmed by the tenant, that she did not ask them to replace the toilet. She testified that she just bought one, thinking it would not be an issue. The landlords both stated that, if she had asked them, they would have paid. The tenant submitted a copy of a receipt dated January 26, 2018 for \$24.65.

The tenant testified that the untreated walkway/entrance to the rental unit is not safe, particularly when it is icy. She testified that she tripped and fell. She stated that she did not see a doctor but had pain in her knee afterwards. She did not submit evidence evaluating the walkway however she did submit photographs of the walkway showing a long walkway or driveway. The main path is quite wide and appears to be cleared and sanded however the end of the driveway (the portion that the landlord testified was not his property but municipal property) did not appear to have been cleared as well as the rest of the path/walkway.

The tenants testified that the roof of the premises was under construction for July and August 2017. She was uncertain of the exact dates. She testified that there were fumes while the roof was being repaired and that she had headaches during the period of the repair. She also testified that there was no notice that the repair would be taking place. Later, the tenant testified that the landlord's notice for repair indicated 2 weeks while the repairs took over a month ultimately. She also testified that the roofers would start very early in the day at approximately 5.00 or 6.00 a.m. She sought two weeks' rent in compensation in the amount of \$375.00.

The tenant testified that, for approximately 10 months from August 2017 to April 2018, water has been leaking from the roof onto her balcony causing mess, discomfort and time to work and clean up after the leak.

The tenant testified that she did not send anything in writing to the landlords with respect to the leak. She sought compensation at 5% of her rent (\$37.59) per month for 10 months totalling \$375.90. The landlord testified that he was not notified by the tenant of this issue prior to the tenant filing this application.

The landlord testified that the roof repairs in August 2017 were done to ensure that there was an extended overhang for the roof. One of the reasons for the repair, beyond the age of the roof, was to ensure that there was no leaking onto the balconies of the residents in the premises. The landlord testified that the roof repairs were successful and that there was no leaks onto balconies after the repair was complete: he testified that, given the overhang created, it would be virtually impossible for water to leak on the tenant's balcony. As well, the landlord testified that signs were posted to advise the occupants of the premises of the upcoming repairs. He testified that the signs were posted at least one month before the repairs began. He testified that no other tenant complained of fumes. Furthermore, he found that any smell from the roof repair dissipated in a matter of minutes.

The tenant applied to both recover the cost of her own bed bug treatment. She did not dispute the evidence of the landlord that this treatment was ultimately ineffective in ridding the unit of bed bugs. She also did not dispute that she has refused treatment for bed bugs by the landlord on more than one occasion. The tenant did not like to describe it as refusing to have the treatment however, she stated during this hearing, that she just needed time to decide. At this hearing, the tenant sought an order that the landlord use his treatment (the same spray offered on the first date discussing the bed bug issue) to spray (near) her rental unit. She sought \$187.50 for 7-10 days for the effect on her breathing of the bed bug spray near her rental unit. She testified that she had to lie down for a week because of a severe headache.

The tenant testified that she spent \$314.00 photocopying, mailing documents and generally preparing her materials and herself for this hearing. The tenant also testified that, when the landlord raised the prospect of treatment for the bed bugs, the tenant conducted several hours of research "on the landlord's behalf." The landlord denies ever asking the tenant to conduct research for her or to pay her for research. He testified that he had hired professionals to conduct the bed bug treatments and had provided her with materials from the company because she expressed concern about her health and safety if the rental unit was sprayed with a pesticide. The tenants sought \$170.25 for her work and time.

The tenant also sought \$235.35 for the bed bug treatment that consisted of holistic, natural products in an attempt to rid the unit of bed bugs on her own. The landlord argued that he had provided safety information, offered treatment and that he never agreed to allow the tenant to use a different product or to pay her to do so herself.

The tenant also sought an amount in aggravated damages: at this hearing, she estimated it should be “around \$21,000.00.” She testified that her original application sought a larger amount in aggravated damages. however she reduced them at this hearing and sought \$21000.00 in damages because the landlord poisoned her with the bed bug spray he used. She argued that this was a very serious matter. She was unable to explain how this differed from her claim for \$187.50 for headaches and breathing effects from the bed bug spray. The tenant also argued that there is mold in the rental unit that is perpetuating her health issues. She sought \$85.80 for mold spray and painting to eradicate mold on her patio that she created an organic solution to combat.

In response to the tenant’s claims, the landlords both testified that there is no mold in the rental unit. The landlords also provided undisputed testimony that the tenant never requested the following items prior to purchasing them herself including a replacement toilet seat; mold spray; painting and own holistic bed bug treatment.

The landlords stated that the aggravated damages sought by the tenant are outrageous given that they are facing serious infestation at their rental property. They argued that she is damaging their unit and the whole building as well as its occupants by failing to allow her unit to be properly treated.

Analysis

While I have turned my mind to all the documentary evidence, including correspondence between the parties, invoices and photographs as well as the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both party’s claims and my findings around each are set out below.

With respect to whether this tenancy will continue, when a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 1 Month Notice to End Tenancy on February 9, 2018, the landlords claimed that the tenant has put the landlords' property at significant risk. I accept the landlords’ submissions with respect to the 1 Month Notice.

I accept the testimony of both landlords that the tenant refused, on an ongoing basis, to allow the landlords or their agents to enter the rental unit to spray for bed bugs. The

tenant did not deny that she effectively refused treatment – she just chose to describe it differently. I find that the landlords were reasonable in their requests to enter the rental unit and to spray for bed bugs, given all of the circumstances described at this hearing. Furthermore, the tenant does not deny that she did and still does have bed bugs in her unit. The landlords submitted documentary evidence in support of this testimony, including pest company information on the number of units that were treated all around the tenant's rental unit. I find that the tenant did not allow the landlords to fulfill their obligation to other occupants of the rental premises by refusing to have her unit treated. I find that the tenant made the matter worse by refusing treatment in the manner recommended by the pest control company and undergoing an ill-informed attempt to treat the bed bug problem herself. As well, I note that the tenant's testimony was that she required more than the notice for entry required of landlords under the Act, that the landlords complied with their requirements and often allowed additional time. While the landlords took the appropriate measure to meet their obligations, this tenant has assisted in the growth of the problem. I also accept that, as the landlords are in a small community, their reputation has likely been impacted by the ongoing bed bug problem.

For all of the reasons above, I dismiss the tenant's application to cancel the 1 Month Notice and issue an Order of Possession to the landlords for the rental unit.

The applications relating to the cancellation and/or enforcement of the 2 Month Notice to End Tenancy, are moot and dismissed for that reason.

For the same reasons provided above regarding the tenant's actions with respect to bed bug treatment, I find that the tenant is not entitled to compensation for her own costs for her natural bed bug treatment. I find that the tenant is not entitled to compensation for 7-10 days of lying down/difficulty breathing after a bed bug spray treatment (in her unit). I find that the tenant provided insufficient evidence to support her claim of illness because of the spraying. I accept the undisputed testimony of the landlords that, at no time did they request that the tenant conduct research regarding bed bug treatments on their behalf. Therefore, I find that the tenant is also not entitled to her work and time researching this issue.

As this tenancy will come to an end, I decline to make any order for repairs to the rental unit or regarding the landlords' access to the rental unit. Further, I find that the landlords have complied with the Act in every circumstance that has been provided to me. I find that the landlords provided sufficient notice to enter in accordance with the Act. I find that the landlords responded to inquiries for repairs when they were provided to him, even when they were not in writing. I find that the landlords provided notice for repairs to

the roof, that the repairs occurred over a reasonable time and that the tenant provided insufficient evidence of fumes from the roof repair. Therefore, the tenant is not entitled to compensation for the period of time that the roof repair was ongoing.

I find that the landlords provided undisputed evidence as to the dates of the roof repair and the nature of the repair. Based on the evidence of the landlords, which I accept, I find that the tenant did not provide sufficient evidence to show that water leaked onto her patio after the leak repair. I accept the evidence of the landlords that this is extremely unlikely in all of the circumstances. Therefore, I find that the tenant is not entitled to compensation (5% rent reduction for 10 months) for a leak onto her patio/balcony.

I dismiss the tenant's application for administrative costs related to her application and this hearing including photocopying and mailing. Pursuant to section 72, the costs of litigating are not recoverable fees.

I find that the tenant has provided insufficient evidence to support her claim for aggravated damages. I find that the tenant provided no physical/documentary or other evidence to support this claim and furthermore, that the tenant was unable to provide a clear explanation of the nature of this portion of her claim. Section 59 of the Act requires a party to particularize their claims - provide sufficient detail. That detail is necessary both so a respondent can reply to the claim and so the decision maker can understand the nature of the claim. Upon directly asking the tenant what evidence she had to support her claim for aggravated damages and what the difference was between her individual claims against the landlord and her more general aggravated damages claim, I find that the tenant was unable to provide a sufficient explanation or materials that would support the claim for aggravated damages. Therefore, I dismiss the tenant's claim for aggravated damages.

I find that the tenant is not entitled to recover the cost of her new toilet seat, as she did not, as required by section 33 of the Act, make the request of the landlord to repair or replace prior to making her own purchase.

As the landlords were successful in their request for an Order of Possession, I find that the landlords are entitled to recover their filing fee.

Conclusion

I dismiss the tenant's application in its entirety.

I order that the landlords may retain \$100.00 from the tenant's \$275.00 security deposit. As the tenancy will end, the remainder of the deposit will be addressed in accordance with the Residential Tenancy Act.

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: April 26, 2018

Residential Tenancy Branch