



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EWA LIS
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This matter dealt with an application by the Tenant for emergency and general repairs, to restrict the Landlord's right of entry to the rental unit, for compensation for loss or damage under the Act, regulations and tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement, for a rent reduction while repairs are being completed and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on March 16, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there emergency and general repairs to be completed to the rental unit?
2. Is the Tenant entitled to restrict the Landlord's right of entry to the rental unit?
3. Is the Tenant entitled to compensation for loss or damage under the Act, regulations or tenancy agreement?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?
5. Is the Tenant entitled to a rent reduction while and if repairs are being completed?

Background and Evidence

This tenancy started on April 1, 2009 as a fixed term tenancy with an expiry date of July 31, 2010 and then continued on a month to month basis. Rent is \$1,186.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$525.00 on July 29, 2009. The Tenant said he believes there was a move in condition inspection completed at the start of the tenancy.

The Tenant said there is one main issue in his application. The Tenant said he has a severe rodent infestation in his rental unit that started in September 2016 and the Landlord has not taken the required action to correct the infestation. As a result the Tenant is requesting to have emergency and general repairs completed to the unit to stop the rodent issue and to repair the damage caused by the rodents. Further the Tenant said he is requesting compensation from September 2016 to the present, as his tenancy has been devalued because of the rodent infestation. Further the Tenant has requested a rent reduction until the repairs are completed, for the Landlord to comply with the Act and provide proper notice of entry to the rental unit. The Tenant said he is seeking \$28,736.00 in compensation in his application.

The Arbitrator told the Tenant the maximum claim under the Residential Tenancy Act is \$25,000.00 so his application will be adjusted to that amount. The Tenant said he understood.

The Tenant continued to say he informed the Landlord that he had a mice issue in March 2015. The Tenant continued to say that the Landlord gave the Tenant sticky pest traps and told the Tenant the clean up of mouse feces was the Tenant's responsibility. The Tenant said the infestation increased and then in September, 2016 the Tenant said he told the Landlord it was a serious mice infestation. The Tenant said the Landlord has not dealt with the infestation effectively for almost 2 years. Further the Tenant said the mice got into his frig and stove and damaged both appliances to the point they were not usable. The Tenant said he was without the use of the frig and stove for approximately 1 year. The Tenant continued to say the Landlord replaced the frig and stove in January 2018.

The Tenant said he is concerned for his health as his girl friend got sick and he believes it is "hantavirus disease" which is transmitted in mice feces and urine. The Tenant continued to say the floor boards in the kitchen are saturated with mice urine and feces and the pest control person said that his work will only controls the surface of the floors. The Tenant provided extensive video and photographic evidence of the condition of the floor in the kitchen. The video evidence shows the pest control person saying if the problem is in the subfloor which it could be then it is a structural problem not a surface problem. The Tenant said he is sure the mice are living under the floor and in the walls of the rental unit. The Tenant requested that the Landlord be ordered to correct the mice infestation issue and to compensate the Tenant \$25,000.00 of rent which would be his total rent payments since the infestation problem began.

The Landlord said they have acted responsibly to the Tenant's requests. Firstly the Landlord said they received a formal request to replace the frig and stove in early January 2018 and they had a new frig and stove in the Tenant's unit on January 20, 2018. Further the Landlord said they have a pest management company that works in the rental complex on a regular basis. The Landlord said the pest management company comes to the building at least once a month and many times twice a month to

replace traps and to assist tenants who indicate they have a rodent issue. The Landlord submitted 20 plus invoices from the pest control company over the last year starting in January 2017. The Landlord continued to say they have had the pest control company in the Tenant's unit 5 times over the last year. The Landlord submitted copies of the invoices for the Tenant's unit dated March 21, 2017, April 27, 2017, June 27, 2017, July 27, 2017 and March 5, 2018. The Landlord said the Tenant has some responsibility to control the rodents as well. They believe that the Tenant's pet ferret has food that attracts mice. The Landlord said the pest control company wrote a letter to the Landlord dated April 4, 2018 that indicates the ferret food attracts mice; the Tenant has other food out that attracts mice and the Tenant leaves the patio door open that could allow mice into the unit. The pest control company says in the letter they believe the Landlord has taken the proper action by hiring them to help control the mice in the rental property. Further the Landlord said the invoices from the pest control company indicate that the rodent activity in the Tenant's unit and the rental complex is minimal. The Landlord said they are doing their best to control the mouse issues.

The Landlord continued to say that they have taken the right action as responsible landlords to deal with the rodent issue in the building. The Landlord said he believes the Tenant has to take some responsibility for the issue as well. The Landlord said they are doing what is required by a responsible landlord to control the mice and they do not believe the Tenant's claim for \$25,000.00 in compensation for the rodent infestation is valid. Further the Landlord said the Tenant's request for a rent reduction due to the rodent issue is not valid as well. The Landlord requested that the Tenant application be dismissed.

Analysis

Section 29 of the Act says: (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

The Tenant has requested that the Landlord does not enter the rental unit unless the Tenant or an agent of the Tenant's is present in the unit. Consequently I order the Landlord to comply with section 29 of the Act and issue a 24 Hour Notice of Entry to the Tenant prior to entering the rental unit. The Tenant has the right to reschedule the entry if it is not an emergency and the Tenant is unable to attend at the time indicated on the Notice.

With regard to the Tenant's application for emergency and general repairs I find the following:

Section 32 of the Act says: (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.

Section 33 of the Act indicates a landlord is required to make emergency repairs where they are urgent, necessary for health or safety of anyone or for the preservation or use of a residential property.

I have reviewed that large volume of evidence submitted by both the Tenant and the Landlord and while I find there may be some health risks there was no corroborative medical evidence to confirm this. Therefore I do not find the issue of a rodent infestation is of the nature of an emergency repair, as defined by the Act; however I find the Tenant has provided through photographic and text message evidence that he has

endured a rodent infestation of a serious nature. This is further supported by the Landlord's evidence that indicates five visits by the pest control company to the Tenant's unit and multiple visits to 20 other units in the rental complex. The Landlord said the pest control company invoices indicate a minimal activity level of the rodents. After reviewing all the invoices; I find based on the number of unit affected and the frequency of the pest control company visits and on the balance of probability the level of rodent activity is not minimal. I accept the Tenant's testimony and evidence that there is a serious rodent infestation in the Tenant's unit and the rental complex that the pest company has been unable to control. Consequently, I find the Landlord was advised of the Tenant's rodent issue many time from March 2015 originally and then in September 2016 and on a number of occasions to the present time. Although the Landlord has taken action in hiring a pest control company, the action has not been **effective** to correct the problem. I also accept the Landlord's testimony and evidence that the Landlord thinks they have acted responsibly by hiring a pest control company, but the Landlord's actions have not corrected the rodent infestation.

It is the responsibility of both the Landlord and the Tenant to work together to control and effectively prevent rodent issues. The Tenant is responsible to have a clean unit with no food left out whether it is pet or people food so not to attract rodents. As well the Tenant is responsible to clean up dropping and mess from the rodents. The Landlord is responsible for any rodent problems that are structural to the building. This means if the rodents are living in the floors and walls the Landlord is responsible to take action to full exterminate the rodents at the source of the problem. As the Tenant's evidence and recorded conversations with the pest control company's representative and handyman indicate the rodents are most likely living in the structure of the building, this infestation is primarily the Landlord's responsibility. Consequently I find the Tenant's quiet enjoyment of the rental unit has been devalued by the Landlord's **ineffective action** to control the rodent infestation in the Tenant's unit and the building. I find the Tenant has established grounds for compensation from the Landlord for not dealing with the rodent infestation in an effective manner. In addition I recognize the

Landlord has made efforts to deal with the mouse issue which I have taken into consideration in determining the award to the Tenant.

Policy guideline 16 says: The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" 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.

- "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

I find that the Landlord has not complied with section 32 of the Act. I award aggravated damages to the Tenant for the rodent infestation of \$150.00 per month from September 2016 to May 2018 or \$150.00 X 20 months in the amount of \$3,000.00 as full compensation for the rodent infestation. The Tenant has requested all his rent back for the time period of the rodent infestation, but I find the Landlord has made efforts to control the rodents and the Tenant had full use of the rental unit through out the this period. Therefore I dismiss the Tenant's claim for \$25,000.00.

Further I order a rent reduction of \$150.00 per month to the Tenant until the rodent infestation is full controlled.

In addition I order the Landlord to replace or repair all the flooring and walls in the Tenant's rental unit that have been damaged by rodent activity. To determine this I order the Landlord to use an independent contractor to make the assessment and to do the repair work.

Further I dismiss the Tenant's request for \$160.00 for carpet cleaning as I find this is the responsibility of the Tenant not the Landlord.

As the Tenant has been partially successful in this matter I Order the Tenant to recover the \$100.00 filing fee from the Landlord.

Conclusion

A Monetary Order in the amount of \$3,100.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

I Order a rent reduction of \$150.00 per month until the rodent issue is fully and effectively controlled.

I order the Landlord to hire an independent contractor to repair or replace all rodent damage in the Tenant's rental unit.

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: May 23, 2018

Residential Tenancy Branch