# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes RP, LRE, MNDC, PSF, OLC

Introduction

This hearing was scheduled to deal with a tenant's application for repairs orders; orders for compliance; orders for the landlords to provides services or facilities required under the tenancy agreement or law; orders to suspend or set conditions on the landlord's right to enter the rental unit; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and procedural matters

At the outset of the hearing, I confirmed service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenant sent her Application for Dispute Resolution to the landlords at the male landlord's place of employment. The tenant pointed out that the landlords had not provided a service address on the tenancy agreement. I noted that the tenancy agreement did not contain a service address for the landlords although the landlords stated that the tenant knows where they reside. Nevertheless, the landlords were in receipt of the tenant's Application for Dispute Resolution and I deemed the landlords sufficiently served pursuant to the authority afforded me under section 71 of the Act.

I heard that the tenant delivered a 72 page evidence package to the landlords at their residence on April 18, 2018 and the same package was delivered to a Service BC office. I informed the tenant that only three pages of her package were uploaded to the Residential Tenancy Branch system. The tenant requested an adjournment. I informed the parties that I would proceed to hear the case and I requested the tenant reference specific page numbers of her package during her oral testimony and that I would permit

the evidence package to be re-submitted after the teleconference call ended and I would consider it in making this decision. The landlords were also given opportunity to respond to the specific documents referenced by the tenant during the hearing.

The landlords had also served a sizable evidence package and written submission to the tenant and the Residential Tenancy Branch, including digital evidence. The tenant confirmed receipt of the landlord's evidence package and confirmed that she was able to see/hear the content on the digital device; however, she wanted it noted that she considered the digital evidence to be an invasion of privacy.

The tenant had identified numerous issues in making her Application for Dispute Resolution. Issues contained in an Application for Dispute Resolution as supposed to be related and Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Most of the issues raised by the tenant were unrelated to other issues. Since the tenant indicated on her Application for Dispute Resolution that she was in need of repairs despite previous requests for the landlords to make repairs, I informed the parties that I would deal with the tenant's request for repairs that she made at the time of filing, which was accomplished. The tenant stated that loss of privacy and quiet enjoyment were her main concern and I also addressed that issue during the hearing. The parties also reached agreement with respect to a few other issues and I have recorded their agreement in this decision. The tenant withdrew her monetary claim and I dismissed that component of her application with leave to reapply. Any other issues not addressed in this decision are dismissed with leave to reapply.

The rental unit is one of three units on the property. I have amended the style of cause to indicate the subject rental unit is unit #1, as indicated on the tenancy agreement.

Issue(s) to be Decided

Is it necessary and appropriate to issue repair orders, orders for compliance or any other orders to the landlords?

Background and Evidence

The parties executed a written tenancy agreement on May 17, 2013 for a one year fixed term tenancy set to commence on July 1, 2013 and expire on July 1, 2014. The tenant paid a security deposit of $925.00 and a pet damage deposit of $500.00. The monthly rent was set at $1,850.00 and payable on the first day of every month.

The tenancy agreement provides that the tenancy would end and the tenant would vacate the rental unit at the end of the fixed term; however, the tenant did not vacate and the landlords did not enforce that term. Nor, did the parties execute another tenancy agreement. The tenant seeks recognition that the above described tenancy agreement continued on a month to month basis upon expiration of the fixed term. The landlords were in agreement that the tenancy continued on a month to month basis with the same terms described in the written tenancy agreement.

In filing her Application for Dispute Resolution on February 28, 2018 the tenant indicated the following outstanding repair issues. Below, I have recorded the parties' respective positions and evidence:

1. Stove not working

The tenant stated this issue has since been rectified.

2. Fridge door handle missing

The parties were in agreement that the door handle has been off for the last 1.5 to 2 years. I heard that upon notification of the issue, the landlord looked into getting a replacement door handle but determined that a replacement fridge door handle is no longer available. The parties were also in agreement that the tenant had notified the landlord that no further repair was required. The landlord provided a video showing that the door is opened from the side of the door with one finger and was of the position the door did not require a handle to function.

3. Mould in downstairs unit #2

The tenant asserts that there is mould in a lower rental unit and that she can smell it through the forced air ducts. The tenant stated that the tenants of the lower unit confirmed to her verbally that there is mould in the lower unit. The landlord acknowledged two small water leaks in the lower unit and claims to have stopped the water ingress, dried that unit quickly with heaters and dehumidifiers, lifted the carpet and replaced the underlay; and, there is no mould. The landlord provided a letter written by the tenants of the lower unit to demonstrate there is no mould.

4. Cabinet fronts peeling off

The tenant submitted that the cabinet fronts of many cabinets in the kitchen are peeling off and that she is unable to sufficiently clean the cabinet doors. In support of the tenant's position the tenant pointed to a document that she and her friend wrote upon inspection of the property on March 19, 2018. The landlord acknowledged that an upper cabinet door is delaminating, and that a drawer and a lower cabinet door have cracked vinyl fronts but that the cabinets and drawers remain functional. The landlord provided video of the cupboard door and drawers opening and closing. At the very end of the video one can see someone's finger pulling down on the upper cabinet vinyl covering.

The landlords are of the position the cabinet is delaminating due to the tenant's use of a toaster under the cabinet. The tenant responded by acknowledging her toaster is located under that cabinet but pointed out there is a plug in that location and it is a natural place for the toaster.

5. Fence and gate rotten

The tenant stated the gate has since been fixed. The tenant stated that the landlord had fixed fence panel after she filed but that it has again fallen apart. The tenant acknowledged that she had not informed the landlords of this. The tenant pointed out that the fence is important to the tenant because she has a dog. The landlords were unaware that the fence panel fell apart again and when I instructed the landlords to go investigate this issue again and make another repair, if necessary, they were agreeable to doing so.

6. Back stairs rotten

The tenant submitted that there are two steps to her back deck that are rotten. The landlords acknowledged that two steps appear weathered but were of the position they are not rotten. The tenant pointed to the document she and her friend wrote upon inspection of the property on March 19, 2018 in support of her position. The landlord stated that on March 19, 2018 he inspected the property and that he found the steps were not rotten. Both parties were in agreement that the landlord jumped up and down on the steps on March 19, 2018. Neither party provided photographs or video of the back stairs.

In addition to the above, the tenant submitted that the landlords have not posted emergency contact numbers. The tenant was of the position that the landlords should name an agent or provide the name of a plumber she may contact in the case of an emergency. The tenant acknowledged that she was provided a telephone number for each of the landlords on her tenancy agreement.

As for the tenant's assertion of loss of privacy and quiet enjoyment, the tenant stated that she wants written 24 hour notice before the landlords enter the backyard or common areas on the property. I informed the tenant that landlords are not required to give a tenant notice prior to entering common property. As for the backyard, the tenant stated that it is for her exclusive use. The landlords acknowledged that they have regarded the back deck and the back yard as being for the tenant's exclusive use. The landlords were agreeable to giving the tenant written 24 hour notice before entering the back yard if that is what the tenant wants. The landlords stated that they had been sending the tenant text messages in the past prior to entering the back yard. The tenant specified that she does not want text messages but that she wants a proper document given to her. The landlords were agreeable to her request and will do so in the future.

The tenant submitted that she considers the driveway to be for her exclusive use since she is entitled to park her car on the driveway under her tenancy agreement; and, the front yard since she is required to mow the lawn under the Addendum. The tenant acknowledged that the front yard is not fenced. The landlord had submitted that the tenant was required to mow the lawn as a negotiated term of tenancy and in consideration of the landlords reducing the rent when the tenancy formed. The tenant stated that the landlords had a gardener come mow the front lawn without giving her 24 hour written notice. I informed the tenant that it is unlikely the driveway and the unfenced front lawn of a multiple unit building would be considered her exclusive use property and she appeared to accept that and I did not hear further arguments on this issue.

Both parties raised an issue with respect to parking on the property. The tenancy agreement provides that the tenant is to have one parking space on the driveway. Both parties were in agreement that at times it is desirable for the tenant's vehicle to be moved out of the driveway, such as when tenants are moving in or out of the two basement suites, or if the landlords wish to move the RV stored on the property. The parties reached an agreement that the landlords shall give the tenant at least 24 hour written notice as to the dates and times the landlords seek to have the tenant's vehicle

moved off the property and upon such notification the tenant shall ensure her vehicle is moved.

In the few minutes of hearing time remained, the tenant touched on issues with respect to alleged attempts of the landlords to remove services or facilities; increase the rent; charge additional rent of an additional occupant; and, force the tenant into a new tenancy agreement. I informed both parties that the Act provides for termination of services and facilities; increasing rent; charging additional rent for additional occupants; and modifying terms of tenancy. As for modifying an agreement or entering into a new agreement, both parties were informed that may be accomplished by mutual consent of both parties. I have provided some references to the parties in the Analysis section of this decision for them to familiarize themselves with and act accordingly.

Finally, the tenant requested an order that the landlord not acting aggressively or confrontational toward her guests. The landlord denied doing so. I suggested that if there are any issues concerning the tenant's guests or other occupants, the landlords raise the issue with the tenant since the tenant is the party with an obligation to the landlords, and has the obligation to ensure her guests and occupants conduct themselves appropriately.

Analysis

As the applicant, the tenant bears the burden to prove an entitlement to the remedies she seeks. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Upon consideration of everything before me, I providing the following findings and reasons.

**Tenancy agreement**

Based on the mutual agreement of the parties during the hearing, I find and order that the tenancy agreement executed on May 17, 2013 continued on a month to month basis upon expiration of the fixed term with the same terms.

The parties are at liberty to re-negotiate and enter into a new tenancy agreement by mutual consent; however, if mutual agreement is not reached, the existing agreement

remains in effect and binding on both parties until such time the tenancy ends, subject only to changes as permitted under the Act. In the absence of a new tenancy agreement, any termination of services or facilities provided to the tenant under the tenancy agreement must comply with section 27 of the Act; any rent increase must comply with Part 3 (sections 40 – 43) of the Act; and, any other terms may be modified by mutual agreement as provided under section 14 of the Act.

**Repair orders**

Section 32 of the Act requires that a landlord repair and maintain the property, 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.

Residential Tenancy Policy Guideline 1 also provides information and policy statements with respect to a landlord's obligation to repair and maintain and I have referred to that policy guideline where applicable.

1. Fridge door handle

Considering the fridge handle has been missing for nearly two years, the landlord has demonstrated the fridge door is easily opened without out a handle, and the tenant acknowledged it did not require repair in a text message to the landlord, I am unsatisfied that a fridge handle must be installed in order for the landlords to comply with section 32 of the Act. Therefore, I dismiss the tenants request for repair to the fridge.

2. Mould in lower unit

The provided opposing evidence as to whether there is a presence of mould in a lower basement suite occupied by other tenants. The tenant relies on oral hearsay evidence; whereas, the landlords produced a letter from those basement suite tenants that contradicts the tenant's position. I find the opposing evidence is insufficient for me to conclude there is mould in the lower unit and I dismiss the tenant's request for a repair order.

3. Kitchen cabinets

The landlord's video shows a cracked lower door front and drawer front and at the end of the video I can see a person's finger pulling down on the vinyl front of an upper cabinet but when the finger is released the vinyl returns to its original position. Presumably, this is the cabinet the landlords described as delaminating. I do not see any other cabinets that are delaminating in the video or photographic evidence provided to me. From what I can see of the kitchen, it appears to be several years old, likely a renovation from the 1990's based on the style and colours used and not as recently renovated as the landlords' suggested.

Although the landlords submitted that the delamination is from the tenant using a toaster, use of a toaster is a common occurrence in a kitchen and I would not consider that an act of negligence. Further, delamination ***may*** be caused by excessive heat or humidity; but, there may other causes including manufacturers defect and aging. Accordingly, I suggest the landlords take into account other reasonable causes of deterioration.

Based on the video evidence, I accept that the cracked and delaminating cabinet fronts are cosmetically unappealing, I am unsatisfied that the kitchen cabinets require repair or replacement so as to comply with section 32 of the Act. However, should the condition worsen, I leave it upon the tenant to notify the landlords of such so that the landlords may inspect and make the appropriate repair.

4. Fence

The tenant submits that the fence panel has fallen apart since the landlord fixed it the last time. Considering the tenant had not notified the landlords of such until the hearing, **I order the landlords to investigate the tenant's complaint made during the hearing that the fence panel has fallen apart and make the appropriate and sufficient repair within a reasonable amount of time.**

5. Back stairs

The tenant described the back stairs as being rotten; whereas, the landlord described the stairs as being weathered. Neither party provided me with photographs or video of the back stairs. I note that the tenant had provided several photographs of other things, including those of minor issues, such as the landlord parking in the driveway, a low

branch on a tree and a hedge or branches coming in close contact with the house. I find the tenant's lack of photographs of the back stairs to be indicative that the stairs may not be rotten but only weathered as described by the landlord. I also heard the parties agree that the landlord had been jumping on the back stairs, presumably in an attempt to demonstrate that they were not rotten, on March 19, 2018. These things considered, I find the tenant did not satisfy me that the back stairs are rotten and I make no repair order for this item.

**Emergency contact information**

Section 33(2) provides as follows:

> (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

The landlords have provided the tenant with their names and two telephone numbers on the tenancy agreement. I find this satisfies the landlord's obligation under section 33(2) of the Act.

These telephone numbers would be used in the case of emergency until such time the landlords provide the tenant with a different contact number, in writing, or as posted in a conspicuous place on the property.

**Service address**

It came to my attention during the hearing that the landlords have not provided the tenant with a service address in writing. Section 13 of the Act provides that the tenancy agreement is to include:

> (e) the address for service and telephone number of the landlord or the landlord's agent;

In the absence of this written information, **I order the landlords to give to the tenant a service address in writing without delay.**

**Loss of privacy and quiet enjoyment**

Section 28 provides that every tenant is entitled to quiet enjoyment and that quiet enjoyment includes:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Exclusive possession refers to the rental unit only, not the residential property. Accordingly, a landlord has a restricted right to enter the rental unit as provided in section 29 of the Act. The rental unit is the living accommodation. An outdoor space for a tenant's use only, to the exclusion of other tenants, is not the living accommodation and does not technically require the landlord to give a written notice or obtain the tenant's consent except if the outdoor space is accessed only by way of the rental unit (such as a balcony in an apartment building); however, in order to protect the tenant's right to "reasonable privacy" it is a good practice for a landlord to gain consent or give notice to enter exclusive use areas to avoid disputes over lack of privacy.

**The parties reached an agreement that the landlords will give the tenant a written 24 hour notice before entering the fenced backyard or back deck and I make this agreement to be an order of mine.** The written notice is to be on paper and delivered to the tenant in a manner that complies with section 88 of the Act. I draw the parties' attention to the deeming provisions of section 90 of the Act which apply where a notice is posted to a door or put in a mailbox.

As for the information that is to be contained in the 24 hour written notice, I point to the requirements of section 29(1)(b) for the landlords to follow.

**Landlord's right to enter rental unit restricted**

**29** (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.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In light of the above, **I order that the landlords must give the tenant a written 24 hour notice prior to entering the fenced backyard or back deck in a manner that complies with section 88 of the Act and takes into account the deeming provisions of section 90. I further order that the notice of entry must contain the information set out in section 29(1)(b) of the Act to be enforceable. Where the landlord has given proper notice the tenant must not interfere with the landlord's right to enter.**

**Notice to move tenant's vehicle**

In keeping with the agreement reached between the parties during the hearing, **I order that if the landlords seek to have the tenant's vehicle moved for periods of time, the landlords will give the tenant written notice at least 24 hours in advance and specify the date and time required for her vehicle to be out of the driveway.** Upon receipt of such notice, the tenant shall have the vehicle moved out of the driveway for the time specified in the notice.

Conclusion

I have not issued any repair orders with this decision except for the landlords to investigate the tenant's complaint made during the hearing that the fence panel requires another repair. I have ordered the landlords to provide the tenant with their service address in writing. I have also provided other orders in keeping with agreements the parties reached during the hearing. With a view to assisting the parties resolve other disputes concerning changes to the tenancy agreement I have referred them to relevant sections of the Act.

The tenant's monetary claim was withdrawn and I have dismissed it with leave to reapply. Any other issues raised by the tenant in her Application for Dispute Resolution but not addressed in this decision were severed pursuant to Rule 2.3 of the Rules of Procedure and dismissed with leave to reapply.

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 18, 2018

Residential Tenancy Branch