



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDLS, FFL
For the tenants: MNDCT, OLC, ERP, RP, LRE, FFT

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution ("applications") under the *Residential Tenancy Act* ("Act"). The landlord applied

This hearing dealt with the landlord's and tenants' Applications for Dispute Resolution ("applications") under the *Residential Tenancy Act* ("Act"). The landlord is seeking a monetary order of \$8,429.17 for damage to the rental unit site or property and to recover the cost of the filing fee. The tenants have applied for a monetary order of \$1,550.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for emergency repairs for health or safety reasons, for regular repairs to the rental unit, site or property, for an order to suspend or set limits on the landlord's right to enter the rental unit or property and to recover the cost of the filing fee.

The landlord, the tenants and counsel for the landlord attended the teleconference hearing which began on May 10, 2018. After 47 minutes, the hearing was adjourned and four orders were made in the Interim Decision dated May 14, 2018 which should be read in conjunction with this decision.

On July 17, 2018, the landlord, the landlord's legal counsel and the tenants attended the reconvened hearing. I will address the compliance with my orders below.

Preliminary and Procedural Matter

As indicated in the Interim Decision, I have severed both monetary claims from this matter pursuant to Rule 2.3 of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“rules”).

Issues to be Decided

- Has the landlord complied with the previous decision order in the previous decision dated January 15, 2018?
- If not, what remedy is available to the tenants under the *Act*?
- Is either party entitled to the return of their filing fee under the *Act*?

Background and Evidence

In a previous decision, the file number of which has been included on the cover page of this decision for ease of reference (“previous decision”) dated January 15, 2018 that previous decision included the following order:

“The landlord is ordered to contact a professional pest control company and arrange for visitation to the property within 30 days of receipt of this decision.”

[Reproduced as written with my emphasis added]

When this hearing began on May 10, 2018, the landlord did not include a copy of the pest control report and as a result, the hearing was adjourned and four orders were made. My four orders were as follows:

1. **I ORDER** that this hearing be adjourned to allow time for the landlord to upload the April 19, 2018 pest control report of two pages (“April 19, 2018 report”) no later than **May 15, 2018 at 3:00 p.m. Pacific Time.**
2. **I ORDER** that the landlord to upload all related evidence to support that the landlord has complied with the April 19, 2018 report regarding suggested repairs no later than **May 15, 2018 at 3:00 p.m. Pacific Time.**
3. **I ORDER** that no amendments or other evidence be uploaded other than what is described in #1 and #2 above and that should any other evidence be uploaded, it will not be considered at this hearing has already commenced.

4. I ORDER the landlord to ensure the tenants are served by registered mail and that the landlord be prepared to provide the tracking number for the registered mail at the reconvene hearing.

[Reproduced as written with my emphasis added]

At the reconvened hearing, the landlord affirmed that he did not serve the tenants as ordered by registered mail and served the tenants personally which the tenants denied. The landlord testified that did not have a witness with him and as a result, and due to the landlord failing to comply with my order, I excluded all evidence served by the landlord since the hearing adjourned on May 10, 2018.

The landlord was asked why he did not comply with my order to which he replied that he thought he could just serve the tenants personally. I advised the landlord that my order was very specific and made purposely to avoid a situation where one party denied having been served personally.

As a result, and having heard on May 10, 2018 from the tenants that the landlord had not complied with the arbitrator's order in the previous decision to contact a professional pest control company and arrange for a visitation to the property within 30 days of the January 15, 2018 decision, the parties were advised that I prefer the testimony of the tenants over that of the landlord as the landlord failed to comply with my order and I did not consider the landlord's testimony to be credible as a result. As the tenants affirmed that they vacated the rental unit the day before this hearing on July 17, 2018, I find the request for emergency repairs to now be moot; however I do make the following findings.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As described above, I find the landlord has failed to comply with the previous decision based on the tenants' testimony which I prefer over that of the landlord. In reaching this finding, I have considered that I find the landlord refused to comply with my order that clearly ordered him to serve the tenants by registered mail and to be prepared to provide the tracking number for the registered mail at the reconvened hearing.

I find the landlord was ordered twice by an arbitrator pursuant to section 62(3) of the *Act* and that the landlord failed to comply with both orders namely:

- “The landlord is ordered to contact a professional pest control company and arrange for visitation to the property within 30 days of receipt of this decision.”
- I ORDER the landlord to ensure the tenants are served by registered mail and that the landlord be prepared to provide the tracking number for the registered mail at the reconvene hearing.

[My emphasis added]

Therefore, I grant the tenants ½ of the monthly rent which is **\$933.25** being ½ of the \$1,866.50 monthly rent as compensation under sections 65(1)(c) and 67 of the *Act* for what I find to be the landlord’s failure to comply with two lawful orders under this *Act* and the resulting unreasonable delay by making the tenants wait until April 19, 2018 for a pest control company to attend the rental unit when the decision which ordered the landlord to have it done in 30 days was dated January 15, 2018. Section 65(1)(c) of the *Act* states in part:

Director's orders: breach of Act, regulations or tenancy agreement

- 65** (1) Without limiting the general authority in section 62
- (3) *[director's authority respecting dispute resolution proceedings]*, **if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:**
- (a) that a tenant must pay rent to the director, who must hold the rent in trust or pay it out, as directed by the director, for the costs of complying with this Act, the regulations or a tenancy agreement in relation to maintenance or repairs or services or facilities;
 - (b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;
 - (c) **that any money paid by a tenant to a landlord must be**
 - (i) repaid to the tenant,**
 - (ii) deducted from rent, or

(iii) treated as a payment of an obligation of the tenant to the landlord other than rent;

[My emphasis added]

As the landlord's evidence was excluded due to the landlord failing to comply with my order regarding service on the tenants, I find the landlord has provided insufficient evidence to support that they complied with the previous decision.

I will not address the repair request; however, as the tenancy has ended and I consider the matter to now be moot as a result.

As the tenants' application has merit, I grant the tenants **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee under the *Act*.

Given the above, I grant the tenants a monetary order pursuant to sections 65(1)(c) and 67 of the *Act* in the amount of **\$1,033.25** comprised of ½ of month's rent of \$933.25 for the landlord failing to comply with the order made in the previous decision which I find resulted in the tenants suffering an unreasonable delay in having a pest control company attend the rental unit.

I caution the landlord from failing to comply with orders made by arbitrators under this *Act*. As I find the landlord has failed to comply with the previous decision order and my order regarding service of evidence, should the landlord continue to fail to comply with orders under this *Act*, the landlord will be recommended for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under the *Act* is up to \$5,000.00 per day.

I do not grant the landlord the recovery of the cost of the filing fee under the *Act*.

As indicated in the Interim Decision, both parties have liberty to reapply for their monetary claims as those were severed under Rule 2.3 of the rules. This decision does not extend any applicable timelines under the *Act*.

Conclusion

The tenants have been granted a monetary order of \$1,033.25 as indicated above. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned for failing to comply with two lawful orders under the *Act*.

The landlord has also been cautioned that any future non-compliance with orders issued under the *Act* will result in the landlord being recommended for an administrative penalty under the *Act*. The maximum penalty for an administrative penalty under the *Act* is up to \$5,000.00 per day.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 17, 2018

Residential Tenancy Branch