



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, FFT, MNDC

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on August 2, 2018, wherein the Tenant requested an Order for emergency repairs, monetary compensation from the Landlord and to recover the filing fee. By amendment filed on August 24, 2018 the Tenant also requested an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on August 7, 2018 (the "Notice").

The hearing was conducted by teleconference at 9:30 a.m. on September 11, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to 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.

Preliminary Matter

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant's request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice and the Tenant's request for emergency repairs. I find that these claims are not sufficiently related to the Tenant's monetary claim; accordingly I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlords be ordered to make emergency repairs?
3. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord, M.S., testified as follows. He confirmed that the tenancy began March 1, 2018. Monthly rent is payable in the amount of \$1,200.00. The rental unit is a single family dwelling with three bedrooms.

The Landlord issued the Notice on August 7, 2018 and personally served it on the Tenant on August 15, 2018.

The reasons cited on the Notice are as follows:

Reason for this Two Month Notice to End Tenancy (check the box that applies)	
<input checked="" type="checkbox"/>	The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The Landlord stated that "because of everything that has transpired since the tenancy began he decided to clean it up and put it up for sale." He claimed that his daughter

and her husband will reside in the property “as soon as the house can be made liveable for them”.

The Landlord then began giving testimony about his concerns with the condition of the rental unit. He stated that the Tenant is using the master bedroom for her own use and the other two bedrooms (with hardwood floors) for her pets. He claimed she had five aquariums in one bedroom and three or four aquariums in the living room and a bird cage. The Landlord stated that the water could leak out and damage the hardwood floor. The Landlord further stated that each aquarium requires 2 outlets and as such the outlets are constantly in use and extension cords are running along the floors.

The Landlord stated that the Tenant is a bit of a “hoarder” and the house is packed full of furniture.

The Landlord further stated that the Tenant put in a good sized swimming pool in the back without notifying him first. He stated that the swimming pool will damage the lawn.

The Landlord then began giving testimony related to the Tenant’s late payment of rent.

As the testimony of the Landlord focussed on allegations of wrongdoing by the Tenant I reminded the Landlord that he had issued a 2 Month Notice for Landlord’s Use, not a 1 Month Notice for Cause such that the Tenant’s behaviour was not at issue. I asked him how his testimony related to his intention to end the tenancy for the reasons cited on the Notice and he responded as follows:

The Landlord stated that because of the problems posed by this tenancy, he has decided that he has no recourse but to put the property up for sale. In terms of how that would “tie in with his daughter” living there, the Landlord stated that his daughter and her husband (who is a contractor) will “help him out” with repairing the rental unit.

The Landlord then testified that to make the property “livable”, it will need to be thoroughly cleaned because it is a mess. The Landlord confirmed that he does not expect his daughter and her family to live in the house the way it is now. He stated that when they get to the point where they are listing the property for sale they will need to clean it. The Landlord failed to submit any photos to support his claim that the rental unit was not liveable.

The Landlord stated that his daughter and his son in law also live in the community in which the rental unit is located. He confirmed that they own their own home. He

claimed that they plan to live in the rental unit and do renovations to it and either sell it or keep it.

In response to the Landlord's testimony the Tenant testified as follows.

The Tenant stated that the Landlord's submissions are a lie and it is in direct response to the Tenant's requests for repairs to the rental unit.

In response to the Landlord's claim that his daughter will reside in the rental unit, the Tenant stated that the Landlord's daughter lives with her contractor husband and they own their own house. She also stated that if he were a contractor he should have been doing the required repairs already.

In terms of emergency repairs the Tenant testified as follows:

- **Electrical repairs:** she stated that she has "arcing electricity" and lights going dim and times when she has not had any power; she claimed that for three weeks she had to run extension cords from the neighbours as there was no power in "half the house". When I asked her why she did not plug into the other half of the house she stated that she didn't have an extension cord at the time.
- **Sewer repairs:** she stated that there are five drains in the basement and chunks of toilet paper and sewer come up the drains.
- **Hole in the bathtub:** she stated that the bathtub has a large hole and the water drains into the basement which has also caused mold.
- **Roof:** she stated that the previous tenant told her that the roof leaks.
- **Toilet:** she stated that the only toilet in the rental unit has not been functioning since August 19, 2018.

The Tenant submitted that she has asked the Landlord to make repairs and he has failed to do so. In support she provided a copy of a handwritten letter to the Landlord dated August 2, 2018 wherein she writes of her request for repairs relating to the sewage backup in the basement. No other repairs are referenced in this document.

The Tenant also submitted 51 photos of the rental unit. These photos show the presence of water in the basement, cleaning products purchased to clean up the

sewage back up as well as gardening items. The photos appeared to relate primarily to her claim for monetary compensation.

In response to the Tenants' claims regarding emergency repairs the Landlord testified that he has been "getting the repairs done". He stated that he has an electrician who has other jobs "big jobs" and hasn't had the time to deal with the rental unit. The Landlord confirmed that the Tenant's complaints regarding the electrical issues are true, but he believes it is because of all the aquariums she has plugged in.

The Landlord stated that the electrician took some time to find the "root of the problem", and he has done work to fix it. He stated that the power used to go out, but it doesn't anymore. He stated that there was a junction box in the attic that required repairs. He confirmed that the only remaining electrical repairs that need to be done include an exterior motion sensing light and an outside light that lights up the driveway.

The Landlord confirmed that the electrical work that needs to be done could be done within an afternoon. He also stated that he spoke to his electrician who said he had time to do this, but the Landlord told him to hold off because he was awaiting the results of this dispute.

The Landlord claimed that the sewer repairs were completed in July. He stated that he had professional drain specialists attend the rental unit a few times and they used the cameras and snake down the drains and then pulled out a clump of roots.

The Landlord further stated that he was informed by the drain specialists that the problem originates from where the house drain connects to the city sewer drain. He stated that he believes he will need to hire a mini excavator to do the digging. When I asked the Landlord when this work could be completed, he then testified that the plumbing issues have all been resolved.

The Landlord admitted that he was aware the toilet had not worked since August 19, 2018. He claimed that no plumber will go in the house.

In terms of the bathtub hole the Landlord stated that he has not been to the house and was not aware of this problem. He stated that prior to the Tenant testifying he was not informed of a hole in the bathtub.

In reply to the Landlord's response the Tenant stated that the Landlord had not been to the house in three months. She stated she showed him the hole in the bathtub when his son in law repaired the tub surround in July of 2018.

The Tenant further stated that she does not believe that the plumbing issues have been resolved. She stated that she can hear the gurgling in the pipes and she believes that the perimeter drains are still full of roots.

Analysis

After consideration of the testimony and relevant evidence before me and on a balance of probabilities I find as follows.

The Landlord issued the Notice pursuant to section 49(3) which in part reads as follows:

(49) (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

As noted, the Landlord bears the burden of proving the reasons for ending the tenancy on a balance of probabilities.

The Tenant alleges the Notice was not given in good faith. She alleges that the Landlord's daughter does not intend to occupy the rental unit.

Residential Tenancy Branch Policy Guideline 2--Ending a Tenancy: Landlord's Use of Property provides in part as follows:

C. GOOD FAITH

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

...

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

The Landlord conceded that his intention was to clean the rental property and prepare it for sale.

A Landlord who wishes to sell a rental property may issue a 2 Month Notice to End Tenancy pursuant to section 49(5) provided that the conditions contained within that subsection are met.

Similarly, a Landlord who wishes to substantially renovate a rental unit may issue a 4 Month Notice to End Tenancy for Landlord's Use pursuant to section 49(6).

The Landlord also made allegations that the Tenant has damaged the rental property and failed to pay rent. Again, a Landlord who wishes to end a tenancy for cause may issue a 1 Month Notice to End Tenancy pursuant to section 47.

That all being said, the reasons cited on the Notice issued in this tenancy were that the Landlord's close family member intends to *occupy* the rental unit. Consequently the Landlord must satisfy me that is his intention and he does not have an ulterior motive.

The Landlord's daughter resides in the same community in a home which she owns with her husband. While she may be involved in the Landlord's plan to renovate the property for sale, or decide to purchase the home from her father, I am not satisfied, based on the evidence before me that she intends to occupy the rental unit.

I accept the Tenant's testimony that the Landlord has not made necessary repairs to the rental unit. I am not persuaded by the evidence before me that his true intention is to have his daughter and son and law reside in the rental unit as claimed on the Notice, rather, I find that he issued the Notice to avoid making the required repairs. I note that the Landlord admitted some repairs could have been completed, but he was awaiting the outcome of this hearing.

I therefore find that the Tenant's Application to cancel the Notice should be granted. The tenancy shall continue until ended in accordance with the Act.

The evidence submitted by the Tenant confirms that emergency repairs are required at the rental unit. The Landlord stated that some repairs had been done, and some remain to be completed. With respect to the exterior safety lights he stated that while the electrician was ready and able to make the repairs, the Landlord was awaiting the results of this hearing to commence this work. He implied this was also the reason he has not completed the plumbing repairs, although his evidence on this point was inconsistent as noted earlier in this my Decision.

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.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

- 8** (1) Landlord's obligations:
- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant.

The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

As this Application deals with emergency repairs in particular, I also reproduce the relevant portions of section 33 of the *Act* as follows:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

The repairs requested by the Tenant, as they relate to the plumbing and electrical, meet the definition above. I am satisfied that the Landlord has not maintained the property as required by the *Act*. While it may be his intention to eventually sell the rental property, while this tenancy is ongoing he is obligated to maintain the rental unit in a reasonable state of decoration and repair, suitable for occupation by the Tenant. The Landlord must also comply with health, safety and housing standards required by law.

I am satisfied the Landlord has attended to some of the repairs, however it is clear some remain to be completed. I therefore grant the Tenant's request for an Order that the Landlord make such repairs.

In furtherance of the above I Order as follows:

1. By no later than September 26, 2018 the Landlord shall:

- (a) Hire a qualified electrician to inspect the electrical in the rental unit and provide to the Tenant, within 7 days of receipt of same, a written opinion as to the reason for the power outages.

- (b) Hire a qualified electrician to repair the exterior motion sensor, driveway soffit lighting and front porch light.
- (c) Provide to the Tenant a copy of the invoice from the drain specialists who serviced the drains in July of 2018 and provide to the Tenant any recommendations received from the drain specialists relating to the rental property.
- (d) Should the drain specialists recommend a course of action which has not been undertaken by the Landlord the Tenant is at liberty to make a further application for an Order that the Landlord make such repairs.
- (e) Hire a qualified plumber to repair the hole in the bathtub and the toilet.

I decline the Tenant's request that the Landlord repair the roof as the evidence submitted by the Tenant does not satisfy me that such repairs are required. She stated that she was informed by the previous tenant that the roof leaks. She also stated that there was a "lake in the basement", however this liquid appears to have originated from the plumbing issues.

Similarly, although the Tenant provided a photo of a door lock, she failed to make any submissions in this regard.

As the Tenant has been substantially successful I grant her request for recovery of the filing fee. The Tenant may reduce her next month's rent by \$100.00.

Conclusion

The Notice is cancelled.

The Landlord shall make repairs to the rental unit in accordance with this Decision.

The Tenant is entitled to recover the \$100.00 filing fee by reducing her next month's rent by \$100.00.

The Tenant's monetary claim is 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: September 12, 2018

Residential Tenancy Branch