



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UVHS-URBAN VISION HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, MNDCT, MNRT, OLC, RP, RR

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on October 30, 2018, wherein the Tenant requested the following:

- An Order canceling a 1 Month Notice to End Tenancy for Cause issued on October 23, 2018 (the "Notice");
- an Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and or the tenancy agreement; and,
 - make repairs to the rental unit, emergency and otherwise;
- monetary compensation from the Landlord in the amount of \$2,310.00;
- an Order reducing the Tenant's rent for the cost of repairs, services or facilities.

The hearing was conducted by teleconference at 11:00 a.m. on December 6, 2018.

Only the Tenant called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:48 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package.

The Tenant testified that his social worker served the Landlord with the Notice of Hearing and the Application by registered mail. He was not able to provide confirmation of the date of this service during the hearing. I granted him leave to upload a copy of the registered mail tracking number in evidence and advised the Tenant he had until 4:00 p.m. on Friday December 7, 2018 to provide proof of service of the Notice of Hearing. I confirm that the Tenant provided this information as requested.

The documentary evidence supplied by the Tenant indicates that the registered mail package, containing the Tenant's Application for Dispute Resolution and Notice of Hearing was sent to the Landlord on October 31, 2018 and received on November 2, 2018. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. I find the Landlord was duly served as of November 2, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's 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.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to make repairs to the rental unit pursuant to sections 32, 33 and 62(3) of the *Act*?
3. Is the Tenant entitled to monetary compensation from the Landlord?
4. Should the Tenant's rent be reduced for the cost of repairs, services or facilities?

Background and Evidence

The Tenant testified that his tenancy began on March 2018. Monthly rent is payable in the amount of \$650.00 which is paid for directly by the Ministry of Social Development & Poverty Reduction.

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. As the Landlord failed to call into the hearing, it was not necessary to hear from the Tenant's response to the allegations contained in the Notice.

In terms of his monetary claim, the Tenant confirmed that it originates from issues with his bathroom sink drain. He testified that the sink plugs regularly and he has had to unplug it on numerous occasions. He also testified that a hole in the plumbing above the p-trap causes the sink to improperly vent such that he has been breathing in sewer gases since he moved in. He claimed that this has made him ill as well as attracting bugs and rodents to the rental unit.

The Tenant stated that he believes that the pipe needs to be replaced in its entirety as his attempt at repairs have not resolved the issue. The Tenant stated that when he brought this to the Landlord's attention, the Landlord's, Property Manager, P., agreed that the pipe needs to be replaced but despite this it has been six months and it is still not fixed.

The Tenant stated that it would likely cost very little to repair the pipe, but he is not in a financial position to do so as he is of limited means.

The Tenant requested an Order that the Landlord make the repairs to the sink as soon as possible.

The Tenant sought a monetary order in the amount of \$2,310.00 representing the time he says he has personally spent trying to fix the bathroom sink, the inconvenience of having to go use another sink in the building, as well as the effects of having an improperly vented P-trap. He confirmed that he based this figure on the amount he would be paid as a 3rd year plumber as well as the amount he has spent in materials.

The Tenant also stated that he received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The one he provided in evidence was from May of 2018. He confirmed that he received one in December as well although a copy was not provided in evidence. The Tenant was cautioned to apply to dispute that 10 Day Notice within the five days of service as required by section 46 of the *Residential Tenancy Act*.

Analysis

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

As previously noted, the Landlord bears the burden of proving the reasons for ending the tenancy. As the Landlord failed to call into the hearing and provide evidence in support of the **Notice, I hereby grant the Tenant's request for an order canceling the Notice. The tenancy shall continue until ended in accordance with the Act.**

I accept the Tenant's evidence that the sink in his bathroom regularly clogs and improperly vents such that sewer gases come back into his rental unit. I also accept the Tenant's testimony that he has brought this to the Landlord's manager's attention, and they have not resolved the issue.

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:

Landlord and tenant obligations to repair and maintain

- 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

Although section 33 of the *Act* allows a Tenant to make emergency repairs and deduct the cost of those repairs off of rent (in prescribed circumstances), I accept the Tenant's evidence that he has tried to fix this problem but requires materials which he cannot afford to purchase.

I am satisfied the Tenant is entitled to an Order that the Landlord make these repairs. As such, and pursuant to sections 32 and 62(3) of the *Act*, I Order as follows:

- 1. By no later than December 24, 2018, that the Landlord hire a qualified plumber to repair the sink in the rental unit bathroom.**

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept the Tenant's evidence that, due to the Landlord's inaction, he has personally tried to resolve the plumbing issues in his rental unit. He stated that in the time he has resided in the rental unit he has had to unplug the sink nine times and at times he has had to use a sink in other areas of the building. Further, I accept his testimony that due to the hole above the p-trap, the sink does not properly vent causing sewer gases to escape into his rental unit.

The Tenant claimed the sum of \$2,310.00 representing \$210.00 per month of his tenancy. I find this to be a reasonable sum based on the testimony before me for the following reasons.

I find the Tenant is entitled to the sum of \$900.00 representing \$100.00 for each time he has unplugged and repaired the sink in his rental unit. I find this to be consistent with the amount the Landlord would have paid for a plumber to attend and address this issue.

The Tenant rents a small room in a rooming house such that the use of a personal sink is essential to his tenancy. The \$1,410.00 remaining from his \$2,310.00 claim represents the sum of approximately \$128.18 per month, which I find to be reasonable considering the devaluation in his tenancy due to the Landlord's failure to address the leak in this sink plumbing.

I authorize the Tenant to reduce his rent until the \$2,310.00 is repaid. Should the tenancy come to an end before the Tenant receives full repayment of this sum, the Tenant shall be entitled to receive the balance owing from the Landlord. In furtherance of this, I grant the Tenant a Monetary Order in the amount of \$2,310.00. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division). Should enforcement be necessary, the Tenant must provide the Court with a copy of this Order as well as details of any rent withheld in furtherance of this Order to confirm the amounts owing.

Should the Landlord not repair the bathroom sink as ordered, the Tenant shall be at liberty to seek further monetary compensation from the Landlord.

Conclusion

The Tenant's request for an Order canceling the Notice is granted.

The Tenant's request for an Order that the Landlord make repairs to the rental unit is granted. Should the Landlord not make the repairs as ordered the Tenant may apply for a further rent reduction pursuant to section 65(1) of the *Act*.

The Tenant's request for monetary compensation in the amount of \$2,310.00 pursuant to sections 62(3), 65(1), and 67 is granted. The Tenant may reduce his monthly rent payments until such time as the \$2,310.00 is repaid. Should the tenancy end prior to the Tenant recovering the full amount, he is entitled to payment of the balance due. The Tenant is granted a Monetary Order for \$2,310.00 which must be read in conjunction with this my Decision.

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: December 10, 2018

Residential Tenancy Branch