



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP, RP, RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order for emergency repairs
- b. A repair order
- c. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided

A hearing was conducted by conference call in the presence of both parties. The hearing was initially set for December 14, 2018 but was adjourned as there was not sufficient time for the parties to present all of the evidence that they wished to present.

There is a great deal of acrimony between the parties. The tenant completed the presentation of his evidence including calling of two witnesses on the first day of the hearing. When the hearing was reconvened the tenant stated he had additional evidence that he wished his witnesses to provide. I determined that it was appropriate to permit the tenant to present this additional evidence in order to provide him a full opportunity to present his evidence and that the landlord would not be prejudiced by this ruling. .

The landlord was then given the opportunity to complete the presentation of his evidence. Both parties were given an opportunity to respond to the evidence of the other party. Unfortunately both wanted to repeat evidence already given or to present additional evidence. I ruled that the presentation of additional evidence was not permitted. At the end of the hearing both parties wanted to submit additional documents that was not previously provided. I determined this was not appropriate and ruled the uploading of additional documents was not permitted.

On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the relevant evidence was carefully considered. The tenant provided a number of pages of documentary evidence. However, the tenant failed to text messages that he was relying on. The landlord provided a number of photographs

that were taken in November 2018. There is a dispute between the parties as to when those photographs were taken. The landlord testified they were taken after the first week of November. The tenant testified they were taken on November 22, 2018. I determined it was not necessary to determine the precise date when the photos were taken.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on landlord November 8, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for emergency repairs?
- b. Whether the tenant is entitled to an order for repairs?
- c. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?

Background and Evidence:

The tenancy began in July 1999. The present rent is \$740 per month payable in advance on the first day of each month. The tenant testified he paid a security deposit of \$250 at the start of the tenancy.

The Law:

Section 32 of the Residential Tenancy Act 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.

Policy Guideline #1 includes the following:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Application for a Repair order and an emergency repair order:

Policy Guideline #40 (Useful Life of Building Elements) provides that the useful life of a carpet is 10 years and an interior paint job is 4 years. The rental property was constructed in 1990. The carpets have not been replaced since the tenant took possession 19 years ago and in all likelihood they are original to the building and over 29 years old. The rental unit has not been painted since the tenant took possession.

The landlord submits they should not be obliged to replace the carpet and paint the walls for the following reasons:

- The landlord provided photos of the interior carpets showing they are heavily stained with a black mark. The landlord testified the tenant repairs his bicycle in the rental unit and this is causing the staining. The tenant denies this. However, he admits that he drives his bicycle over the carpet to put it on the balcony. He testified he does the repairs to his bicycle on the balcony.
- The landlord provided photos that show the tenant has stored his drywall and painting tools and supplies in the rental property which has lead to damage to the carpet.
- There are many other carpets of the same age in the building which are not damaged.
- The tenant failed to provide photos or other evidence to prove the carpet needs to be replaced.
- The tenant is a heavy smoker and he has failed to properly clean the walls.
- The tenant has denied them access.

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

The testimony of the tenant that he has sufficiently maintained the rental unit and never repaired his bicycle in the rental unit is not credible. The photographs show significant stain damage to the carpets. I am satisfied on the basis of the evidence presented that the tenant's neglect or intentional acts has contributed to the damage. However, I determined the carpet was original to the building which was constructed in 1990 which would make the carpet 28 years old. This is long past the useful life of an interior carpet which is set at 10 years. I determined the tenant is entitled to an order that the landlord replace the carpet despite the fact that the tenant's neglect has contributed to the damage.

The tenant is a heavy smoker. This has caused significant staining on the wall. However, the walls have not been painted since the tenant took possession of the rental unit in 1999. I determined that it was appropriate to make an order that the landlord paint the walls to the rental unit provided that the tenant first wash the walls and make arrangements with the landlord for the landlord to hire painters to paint the rental unit. .

With regard to each of the tenant's request for repairs I find as follows:

- a. I order that the landlord replace the carpet in the rental unit with 21 days of receiving this order provided that tenant moves his belongings to allow access to the landlord to replace the carpet and makes appropriate arrangements with the landlord to allow a carpet installer to attend.
- b. I order that the landlord paint the walls to the rental unit provided that the tenant first wash the walls and make arrangements with the landlord for the landlord to hire painters to paint the rental unit.
- c. I dismissed the tenant's application for mold remediation in the bathroom as the tenant failed to present sufficient evidence to prove that such an order was appropriate. .
- d. I order that the landlord fix the fan and any taps that are leaking.
- e. I order that the landlord fixed the drywall in the kitchen.
- f. I dismissed the tenant's application for replace floor lino as the tenant failed to provide sufficient evidence to prove such an order was appropriate.
- g. I dismissed the tenant's application to repair water damage on the countertop as the tenant failed to provide sufficient evidence to prove such an order was appropriate.
- h. I dismissed the tenant's application to repair primer job as the tenant failed to provide sufficient evidence to prove this claim.

In summary I ordered that the landlord do the following within 21 days of receiving this order:

- a. Replace the carpet in the rental unit provided that tenant moves his belongings to allow access to the landlord to replace the carpet and makes appropriate arrangements with the landlord to allow a carpet installer to attend.
- b. Paint the walls to the rental unit provided that the tenant first wash the walls and make arrangements with the landlord for the landlord to hire painters to paint the rental unit.
- c. Fix the fan and any taps that are leaking.
- d. Fix the drywall in the kitchen.

Application of the Tenant for a Reduction of Rent:

The tenant seeks a monetary order of \$35,000 for a reduction of rent. The Application for Dispute Resolution states:

“NO REPAIRS HAVE LED 2 HEALTH ISSUES. (NO DUCT WORK CLEANING IN YEARS, HEALTH ISSUES COMPLICATED) LANDLORD DOING ELECTRICAL/ASBESTOS WORK WITHOUT CERTIFICATION”

The monetary order work sheet states “interfering with my quiet enjoyment of rental unit” and “endangering and hampering my health and well being.”:

The tenant gave the following testimony:

- The landlord has harassed and bullied him to such an extent that he has to take a police escort when he is serving papers on the landlord.
- On October 25, 2018 the landlord’s conducted an emergency repair work on the ceiling in the lobby without proper containment because of the presence of asbestos. As a result he phoned Work Safe BC who placed a stop work order on the job. The water to the rental property was turned off to complete this repair. The fire department was called. However, the building was at risk. Despite the stop work order the landlord returned that evening and continued to work on the job. The landlord subsequently turned the water on.
- He (the tenant) was threatened by other residents in the building because a rumour was spread that his actions had caused the water to be turned off.

- The landlord posted a notice for an inspection. However, the notice did not have the correct year on it and the landlord failed to wait the appropriate time period because it was posted.
- The air ducts have not been cleaned and the ventilation system puts the building at risk. The tenant acknowledged during the hearing on January 17, 2019 that the new owners have cleaned the air ducts.
- He has text messages on his phone from the agent for the landlord harassing and bullying him but he was not able to upload those messages into the documents area and they have not been provided to the Residential Tenancy Branch.
- The address of the agent for the landlord is in another building and was unable to serve the agent for the landlord.
- The police have threatened legal action against the landlord.
- The landlord conducted an inspection of his rental unit in July 2018 and did not find any problem with his unit.
- On one occasion when the landlord attended to fix an electrical problem he refused to allow the landlord to do the work because he was not certified. When the landlord left he forgot the pass key in his door. He had to return it to the on site manager.
- He has refused to allow the building maintenance person into the rental property because he does not have a trade ticket.
- The landlord failed to properly clean the duct work.
- The tenant produced documents that show he has been certified as a Painter, Decorator, Drywall finisher.
- He produced a document dated September 4, 2002 that was to expire on September 4, 2004 that he has his Occupational First Aid Level 2 Certificate.
- He produced photocopies of photograph one of which showed the exterior of a vent system.
- He produced a letter from the landlord in August 2018 indicating he has been late paying the rent on 3 occasions and advising any further late payments would result in an eviction proceed.
- He produced a notice of inspection set for November but misdated and a second notice that was set a few days later.
- He produced a letter from the agent for the landlord dated December 14, 2017 indicating a police officer had talked to him and outlined the tenant's concern about his tenancy. The agent apologized to the extent he had been part of the reason the tenant felt his tenancy was under threat and in an effort to alleviate

tension in the building he stated he was removing all letters and notices for the tenant's file.

RD (Tenant's Witness #2) testified on behalf of the tenant. At the initial hearing he testified

- The actions of the landlord are "bullshit".
- The tenant is a good man and is known to be a hard worker.
- The landlord has been harassing the tenant for a couple of years.
- At the January 17, 2019 hearing RD further testified the ceiling panel in the hallway was about 6 square feet.

KP (Tenant's Witness #1) testified on behalf of the tenant as follows:

- The landlord KK sent inappropriate harassing text messages to the tenant.
- He has filed a claim against the landlord that was set for hearing a couple of days prior to the December 14, 2018 hearing.
- The landlord has demonstrated a pattern of inappropriate behaviour towards the tenant.
- On the January 17, 2019 hearing KP further testified that the carpet in the tenants unit was not black as alleged by the landlord. It is worn through with many holes.
- Since the hearing the tenants have made complaints to the police.

The landlord MS (owner) gave the following testimony:

- The tenant has been confrontational and abusive with the landlord and his employees and has terrorized them. The tenant has considerable problems in dealing with his manager and employees.
- On around November 13, 2018 he and his maintenance person came to inspect the apartment to determine the work that was required. The tenant refused access because of an incorrect dating of the Notice (it had the wrong year on it). A second inspection notice was given. He attended on that date with his maintenance. The tenant would not allow access to the maintenance person stating he did not believe the maintenance person was qualified to do any of the work.

- The maintenance person has been employed by the landlord to do repairs and renovations for more than 10 years and is well capable and qualified to do the work.
- The tenant's apartment is extremely dirty. The tenant is repairing bicycles on the carpet and it is heavily stained with oil.
- The carpets are original to the building.
- The tenant also stores drywall tools and supplies in the rental unit. The landlord relies on a number of photographs that were presented.
- On October 25, 2018 the landlord was completing repair work on a leaking pipe in the ceiling of the entrance way. The tenant phoned Work Safe and they put a stop work order. This occurred on a Friday afternoon. He returned later to temporarily stop the leak so that the water could be turned on for the building. There were 75 people in the building that would have their work supply shut off unless this was completed.
- The fire suppression system was not at risk when the water was turned off as it is on a separate system.
- The landlord produced a document titled Limited Air Clearance Certificate dated October 26, 2018 that states:

“Air clearance samples were collected from the above address on October 26, 2018, following the select removal of drywall with asbestos containing joint compound and texture from the lobby ceiling. A visual inspection of accessible areas within the work area was conducted, an acceptable level of cleanliness within the work area was observed at the time of the inspection. Not other areas of the building were assessed.

....

Air Clearance results are below the current WorkSafeBC criteria of 0.02 fibres/ml of air. Based on the conditions at the time of clearance air sampling, there is no longer a need for respiratory protection or other protective equipment due to the presence of asbestos in this area.

Any exposed asbestos containing drywall filler or unpainted textured ceiling material must be encapsulated prior to removal or containment.”

- The landlord produced a document from WorkSafeBC dated October 29, 2018 stating their previous order had been complied with and no further action was required.

Policy Guideline #16 includes the following:

C. COMPENSATION

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.

Policy Guideline #2 includes the following:

“B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.”

I determined the tenant failed to prove that his health has been adversely affected because of the presence of asbestos in the hall, the failure to remove the ceiling tiles with proper protection and the failure to clean the ducts for the following reasons:

- The tenant failed to present sufficient evidence to prove that his medical condition was compromised. The only medical evidence presented was a short note from a doctor dating back to prior to the incident.
- WorkSafe BC issued a stop work order. However, the report from the occupational hygiene technician taken the next day indicates the air clearance complied with current WorkSafeBC criteria and no respiratory protection was necessary. WorkSafe BC lifted the stop work order a couple of days later after the weekend.
- While the tenant disputes the report of the occupational hygiene technician he failed to provide sufficient proof that it does not accurately set out the situation.
- The new owners have cleaned the vents.
- The tenant failed to provide sufficient evidence including expert evidence that the present situation was hazardous or that he has suffered ill health as a result of it.

I determined the tenant failed to prove that the landlord breached the covenant of quiet enjoyment entitling the tenant to compensation because the manner in which the landlord dealt with the tenant for the following reasons:

- The tenant testified he has text messages on his phone which proves the landlord was harassing him. However, he failed to provide copies of those text messages and failed to provide sufficient particulars. Tenant's witness #1 confirmed the alleged harassment by text message but failed to provide sufficient particulars.
- Tenant's witness #2 testified the landlord's conduct was "bullshit." However, he failed to provide sufficient particulars.
- I do not accept the testimony of the tenant when alleged the landlord made it difficult to serve documents and as a result he had to call the police to assist with service. I accept the evidence of the landlord that the tenant was told that he could serve the building manager. Further the Act permits service by registered mail.
- Section 29 provides as follows:

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). The landlord has a legal right to conduct an inspection of the rental unit

- I do not accept the submission of the tenant that the landlord's efforts to conduct an inspection of the rental unit amounts to harassment or the breach of the covenant of quiet enjoyment. The previous inspection occurred in July 2018. The landlord has the right under section 29(2) to conduct an inspection once a month. The tenant had just filed a claim for emergency repairs and repairs. I determined the landlord acted reasonably in conducting an inspection.
- I further determined the tenant was not acting reasonably when he refused to give the landlord access to conduct the inspection because of a typing mistake

on the inspection notice. While he may have had a legal right to do so it is not the act of a tenant who wishes to have his repair issues resolved.

- Further, I determined the tenant did not act reasonably in refusing to give access to the landlord's maintenance person. The Act does not permit a tenant to deny access as the tenant did. Further, I do not accept the submission of the tenant that he is entitled to deny access because he believes the maintenance person was not qualified to do the work. At this stage it was an inspection only.
- The letters from the landlord to the tenant are respectful and courteous.
- The tenant failed to prove that the actions of the landlord in dealing with him amount to a breach of the covenant of quiet enjoyment. On the contrary I determined that the tenant has acted unreasonably in his conduct in dealing with the landlord.

However, I determined that the landlord has failed to comply with its obligations under section 32 of Act which provides "having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." The carpet was over 25 years old. The walls have not been painted for at 17 years tenancy and perhaps prior to the start of the tenancy. The landlord refused to have the walls to the rental unit painted and refused to replace the carpets. I determined the tenant is entitled to compensation of \$800 for the substandard condition the tenant was forced to live under. I do not accept the submission of the landlord is relieved on this obligation because the tenant is a smoker and failed to take care of the carpets.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: January 23, 2019

Residential Tenancy Branch