



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFIC COVE COMP. DBA PENTICTON APARTMENTS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, RR

### Introduction

The tenant seeks orders for the landlord to comply with the Act and for regular repairs, pursuant to sections 62 and 32 of the *Residential Tenancy Act* (the “Act”), respectively.

The tenant applied for dispute resolution on February 22, 2019 and a dispute resolution hearing was held on April 4, 2019. The landlord’s agent, a witness, the tenant, and the tenant’s witness (her “roommate and caretaker”) attended the hearing, and the parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any concern with service of evidence.

I have reviewed evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, but only evidence relevant to the issues of this application are considered in my decision.

### Issues

1. Is the tenant entitled to an order for the landlord to comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act?
2. Is the tenant entitled to an order for regular repairs, pursuant to sections 32 and 62(3) of the Act?

### Background and Evidence

The tenant testified that the tenancy began on October 1, 1997. Monthly rent is \$499.00. The rental unit is a two-bedroom apartment in a three-storey, 29 rental unit apartment building.

The tenant's first issue is with the landlord's agent ("B.L.," to whom I refer as the "landlord") and the landlord's husband ("K.L.") harassing of the tenant.

According to the tenant, the landlord harasses her by coming "six times a day, every day" to the rental unit. The landlord has called the tenant a liar. The landlord is, or was, "coming every day and phoning" and does so "for any reason." She explained that the landlord has accused the tenant of letting homeless people into the building, for allowing a drug dealer into the building, and that in addition to this she was "accused of a lot of things." The tenant is not well, and has cancer, for which she will receive surgery on May 7. The harassment has caused the tenant a lot of stress.

The harassment started five months ago and except for the last few weeks (or week and a half) when it's been quiet, has been ongoing. She wants the landlord to stop harassing her and seeks an order under the Act to this effect.

The tenant's second issue is that she seeks various repairs to the rental unit. She explained that she would like her place painted; the landlord has promised to paint it, but those promises never materialized. The rental unit was last painted when the tenant moved in over twenty years ago. The tenant would also like to have the bathroom floor—which is vinyl/linoleum tiling—replaced, as it is "coming apart."

The rental unit's carpets are very old and are the original carpets when the tenancy began. The carpet has snags in it. The tenant would also like a proper fridge with glass shelving. While the landlord replaced the old fridge with a new fridge in 2018, the new fridge does not have glass shelves. Finally, the blinds in the rental unit are very old, and are original to the tenancy when it began.

I note that other than a copy of a piece of paper on which some of the above-noted repairs were listed, and a copy of which was submitted into evidence, no other documentary evidence (such as correspondence between the tenant and the landlord regarding the above-noted repairs), or photographs of the issues, were submitted into evidence.

The landlord testified that she does not, and has not, harassed the tenant. She explained that the tenant used to work as a part-time onsite manager, but she was not doing a great job, so she was let go in September 2018. The landlord briefly remarked that some of this (that is, the issues driving the tenant's dispute) may be partly some retaliation against the landlord for the tenant's dismissal.

Reiterating that the landlord is not harassing the tenant, the landlord testified that she has a full-time job as a hospice aid and is busy attending to that job. The landlord admitted that she has come to speak with the tenant about various issues, including the tenant's apparent permitting of various undesirable people into the building. She stated that a drug dealer lived in the rental unit when the tenant was in hospital for about a week. (The drug dealer apparently tricked the tenant, and lied to her, in his gaining access to the rental unit and living there.)

The police have been called "several times" and there are people smoking crack in the stairwells and around the building. The landlord attributes much of this activity to the tenant, so the conversations between the landlord and the tenant are about this activity. "We have to knock on [the tenant's] door if we have concerns," the landlord said. I note that the parties disagreed about how often the police attended to the building.

The landlord also testified that the tenant has a restraining order against her, the landlord's husband, and two other people.

Regarding the repairs, the landlord testified that they never received anything from the tenant about repairs, including the piece of paper (the one that the tenant submitted, and noted above). She said that the list of repairs is "not even [in the tenant's] writing." The landlord explained that they only get one kind of refrigerator that an appliance supplier provides.

Regarding the painting, the landlord has wanted to paint the rental unit, but the tenant is supposed to clean the smoke-stained walls before they can paint. The tenant has failed to clean the walls. Finally, the landlord testified that they don't usually renovate the rental units until a tenant moves out.

The landlord's husband testified that they always try to respond to any notes sent to them from tenants asking for repairs, but, that they never received anything from the tenant.

The landlord submitted that there are lots of thing going on in the building "that are just not kosher" and that many of the tenants think that the place has "gone to shit."

The tenant submitted that the landlord has no proof of any of the things she's accused of. And, the landlord has not provided her with copies of letters sent to the landlord from concerned residents of the building. "Where's her proof?" the tenant asked.

## Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### **Order for Landlord to Comply with the Act, Regulations, or Tenancy Agreement**

Under section 62(3) of the Act, an arbitrator may “make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

While the tenant did not specifically argue which section of the Act the landlord ought to comply with, if a landlord was harassing a tenant in the manner described then that landlord might be breaching section 28 of the Act.

Section 28 of the Act states that

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.

In this case, the tenant testified that the landlord has frequently harassed her by coming to her door multiple times for multiple reasons. The landlord disputes this, and instead testified that she comes to the tenant's door when there are issues to be addressed and resolved. Beyond the tenant's and landlord's conflicting testimony, however, there is no evidence of the landlord harassing the tenant. Neither of the witnesses testified that the alleged harassment occurred. And, there is no documentary evidence about the nature of the conversations that may have occurred between the parties.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, *the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim*. In this case, I find that the tenant has not provided any evidence proving that the landlord breached section 28, or any other section of the Act for that matter.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving a claim for an order under section 62 of the Act. As such, that aspect of her claim is dismissed without leave to reapply.

### **Order for Regular Repairs**

The second part of the tenant's application is for an order for repairs. For me to issue such an order I must find that the landlord breached section 32 of the Act.

Section 32(1) of the Act requires that

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.

In this case, while the tenant argued that the carpets are old, that the rental unit needs a new paintjob, a new bathroom floor, new blinds, and a proper refrigerator, she provided no evidence to prove that the carpets, paint, bathroom floor, blinds, or refrigerator do not in fact comply with health, safety or housing standards required by law. Nor did she provide any evidence—such as photographs or a safety inspection report—that these various issues make the rental unit unsuitable for occupation.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving a claim for an order for repairs under sections 32 and 62(3) of the Act. As such, I dismiss that aspect of her claim without leave to reapply.

Conclusion

I dismiss the tenant's application without 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 Act.

Dated: April 4, 2019

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Residential Tenancy Branch