



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FARWEST CABLEVISION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order for regular repairs.

The Tenant, his spouse, T.R., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any evidence to the RTB or the Tenant.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

Is the Tenant entitled to an Order for Regular Repairs?

Background and Evidence

The Parties agreed that the fixed term tenancy began on February 15, 2016, running to February 28, 2017 and then month-to-month. The Parties agreed that the monthly rent is \$2,900.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$1,450.00, and a pet damage deposit of \$1,450.00.

The Tenant has applied for the following repairs:

	ITEM	DESCRIPTION
1	Pruning Hedge	Hedges need to be trimmed, because they touch the roof allowing rodents to get on the roof.
2	Gutters	Broken in the carport and house corners and entrance
3	Fireplace	Dirt pouring inside from top of fireplace and also leaking around fireplace
4	Roof Soffit	There is a big hole in the roof soffit (S/E corner), because old wood leaning has fallen and now an open area of about 15-40 cm makes attic accessible by rodents.
5	Cracks in Ceiling and Wall	In the basement bedroom, there are cracks in the laminate on the wall and ceiling.
6	Basement Room	Ceiling and side wall coverings of the room in the basement have cracked to the entire length of the room.
7	Spiders	There are spiders and spider webs everywhere inside and outside. We keep cleaning them every week, but they are coming back in the same spots. Need Pest control.
8	Bedroom Window Shade	One of the window shades in the master bedroom is broken and cannot open or close.
9	Emergency #	Gave his wife's number, too, in case they can't reach him.

#1 PRUNING HEDGE

The Tenant said that the problems with the hedge is that it is “double the height of the house.” He said the hedge:

- affects the light they receive;
- has led to an infestation of rodents, because the hedge touches the house;
- they have trouble getting around the house, because of the hedges;
- they cannot exit the car without getting wet; and
- the entrance to the house is becoming narrower and narrower – guests have problems finding entrance.

The Tenant said the hedge has not been pruned at all in the three years they have lived there. The Tenant said that the neighbours have indicated that they would be happy to bring the hedges down - even back neighbour, at some point. “He said he’d pay for his share.”

The Landlord said that the Tenant is right. “I didn’t want them touching the hedges. On the west side, it’s been trimmed; it’s my sister’s house next door. However, if you cut the greenery away you won’t have hedge left. We had it trimmed back about three years ago. It has always been coming into the driveway – it’s always been that way.” He acknowledged that it does need to be trimmed where it touches the roof.

However, the Landlord said: “On the back, I want to maintain that for privacy. If the house is rebuilt and it goes up to two stories, there are privacy issues. The whole street is canopied. Those shade the whole street. Basically, it’s always been the case of this property. Taking the hedge down will take it to a whole other field. I don’t want to take it down to six feet. I’m very amenable to trim it back to get it down on the east side of the house and definitely where it touches the house. There was a tree in front of the master bedroom for privacy, that was interfering with the driveway and that was taken out.

The Landlord said he would drop the hedge to halfway up the window height on the street side and cut the side hedge by fire place by a meter. He said: “It’s tough to cut around the car port, but we can try.”

#2 GUTTERS

The Tenant said that the main issue is the gutter in the carport. There are things inside that are getting wet.

The Landlord said there was an issue on the gutter leaking in the carport. He said: There is a

bit of flashing in front of living room. That gutter and down pipe has been pointed out to me as an issue.” He said the handyman needs a sunny day to do this work. “That’s what [the handyman] is working on right now. That should hopefully be done today.”

The Tenant said that it’s not fixed.

The handyman is coming back to fix it. It was reported in September 2018. How come since then we haven’t had one sunny day to take care of the gutter issue? The storage is all completely wet. Is it done? We didn’t know when or who was coming. This communication is a big problem. We follow up and we follow up and someone comes, no one knocks on the door. The gutter is not fixed.

The Landlord said:

I take offense, I’m going to check into it myself. I’ve turned away work; I was on a job, but gave it back to the client. That had my focus completely. I’m sorry I haven’t spent the last little bit on the house. This arrived on the 19th and that was the day [his wife] went in the hospital.

The Tenant said that the main issue is the gutter in the car port. There are things inside, and they are getting wet. He said “What they did was put the new material for the roof of the carport, which bent the gutter, somehow they broke it.

#3 FIREPLACE

The Tenant said that there is a hole inside the house on top of the fire place. He said dirt pours into the house from the top of the fireplace and it also leaks around the fireplace. The Tenant said he told and showed the Landlord this problem, but nothing has been done to fix it. He said: “This has to be fixed from inside to cover and fill that hole inside. There was a piece of wood, but due to the leaking or moisture or rats, something made the wood rotten and the wood fell.”

The Landlord said: “That has to be organized for sure. It’s basically where the wood wall comes up against the chimney. I could have [the handyman] look at that in conjunction with the outside. The Parties agreed that this would be done by the end of November.

#4 ROOF SOFFIT

The Tenant said: “There is a big hole in the roof soffit – the south/east corner, because

old wood leaning has fallen. There is now an open area of about 15 - 40 centimetres, which makes the attic accessible by rodents.

The Landlord said: "I asked for that to be done today, but didn't get a confirmation on it. It's the overhang, roughly 3 or 4 feet – I should be able to fit a piece of wood in for sure." The Landlord said that this would be "...done by the end November."

#5 CRACKS IN CEILING AND WALL

The Tenant said that the wall and ceiling of the basement bedroom are covered by laminate and that there is a crack. The Tenant submitted a photograph of the ceiling showing a distinct crack or separation in the ceiling. The Tenant said: "When we have guests down there or kids, a spider is going to come up from this crack, or dirt pours from the cracks." He said there is one big crack in the ceiling and one on the side wall - the north wall.

The Landlord said: "I can see what we can do to cover it over. I seem to remember that it's not a regular surface, so it might be some drywall tape and mudding. Yes, that's drywall. I think things are uneven down there." The Landlord said that this will be repaired by mid-December.

#6 SPIDER INFESTATION

The Tenant said: "There are spiders and spider webs everywhere inside and outside. We keep cleaning them every week, but they are coming back in the same spots. We need pest control."

The Landlord said that "We have spiders everywhere here."

The Tenant asked the Landlord for his permission to take care of this on their own. He said: "I'll show you the receipt and deduct it from the rent. When pest control is here for rodents, they could do entire house for \$200.00 or something."

The Landlord said: "Do you have the pest control number and I could give him my [credit card] number and they can control it."

The Parties decided that the Tenants will arrange for pest control and forward the Landlord the bill and that he will reimburse the Tenants for this cost.

#7 BEDROOM WINDOW SHADE

The Tenant said that the string to control the window shade is torn and that it does not go up or down. The Tenant said: "This is not something we mind taking care of. The problem is with the communication. It has been interrupted. We don't get responses [from the Landlord] in time. I can fix it in one day. I don't mind paying for it myself . . . but it is his."

The Parties discussed the details of getting a new shade to replace the broken one. The Tenant said he did not care if it was vinyl or metal.

The Landlord said: "What I could do is when the handyman is there, he could take those blinds down and put new ones up. It'll all be done at once – I'll aim for the end of November."

#8 EMERGENCY CONTACT NUMBER

The Tenant expressed concern about reaching the Landlord if they have an emergency. He said a timely response from the Landlord is a problem with the tenancy. The Landlord said that he is the contact person for an emergency; however, he gave the Tenant his wife's telephone number as a back up. He said: "Call her and she knows where to find me."

Analysis

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

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 and 37 of the Act. Section 32 states:

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.

RTB Policy Guideline #1, "Landlord & Tenant – Responsibility for Residential Premises" clarifies section 32 of the Act, as follows:

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.

2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

[emphasis added]

I find that the Parties appear clear on their roles in handling repairs at the residential property, and are willing to compromise to make it easier on the other Party; however, I find that the Landlord has been remiss in addressing repairs needed by the Tenants in a reasonable amount of time.

Throughout the hearing, the Parties agreed on the following repair schedule:

	ITEM	REPAIR COMMITMENT
1	Pruning Hedge	→Trim it down on the east side of the house; →Trim where it touches the house; →Drop hedge to halfway up window height -street side; →Cut side hedge by fire place by a meter; and →Try to cut around the car port. The aim should be for these to be done by the end of year.
2	Gutters	Handyman is working on this right now; should be done today (November 19, 2019).
3	Fireplace	Agreed that the Handyman will fix this by the end of November 2019.
4	Roof Soffit	Will be repaired by the end of November 2019.
5	Cracks in Ceiling and Wall	Will be repaired by mid-December 2019 – the week of December 16, 2019.
6	Basement Room	Will be repaired by mid-December 2019 – the week of December 16, 2019.
7	Spiders	Tenants will arrange pest control, forward bill to Landlord who will reimburse Tenants for this cost.
8	Bedroom Window Shade	Handyman will take shades down and put new one up by end of November 2019.

9	Emergency #	Gave his wife's number, too, in case they can't reach him.
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Should the Landlord not follow the above noted repair schedule within a reasonable amount of time and for an acceptable reason, the Tenant may apply for dispute resolution to seek a rent reduction based on the Landlord not complying with these repair commitments.

The Landlord is also cautioned about the importance of replying to the Tenants' requests in a reasonable amount of time.

Conclusion

The Tenant's Application is successful, as the Landlord has committed to repair or replace the necessary items noted above. The Landlord is Ordered to have the nine items remedied by the deadlines set out in the above noted chart, or by the end of 2019 at the latest.

The Tenant is granted leave to reapply for compensation, should the Landlord not abide by the commitments he made in the hearing that are set out in this 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 3, 2019

Residential Tenancy Branch