



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for compensation pursuant to section 67;
- A monetary order for compensation pursuant to section 51.

The landlord attended the hearing and the tenant attended the hearing, represented by her counsel, CD ("tenant"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence. I am satisfied the landlord was served with the Notice of Dispute Resolution Proceedings package in accordance with section 89 of the Act. The landlord acknowledged receipt of the tenant's evidence, with the exception of the written submissions and argument of the tenant's counsel. The tenant acknowledged service of the landlord's evidence.

Preliminary Issue

The tenant's counsel advised she did not provide the landlord with a copy of an outline of her argument and submissions that were provided to me prior to the hearing. Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing, documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

I determined that since the tenant's outline of argument and submissions were not provided to the landlord, they did not comply with rule 3.14 and in accordance with rule 3.17, I determined that they would not be referred to in drafting my decision. The tenant's oral testimony and other documentary evidence that was exchanged with the landlord would be admitted.

Issue(s) to be Decided

Is the tenant entitled to be compensated under sec. 67 for the landlord's breach of the tenant's entitlement to quiet enjoyment under sec. 28?

Is the tenant entitled to be compensated under sec. 51 for the landlord ending the tenancy under section 49(6)(b)?

Is the tenant authorized under sec. 72 to recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenancy involves a small studio apartment on the 10th floor of the building. On the 10th floor, the rental unit has access via a sliding glass door to the roof deck of the building. The fixed one year tenancy began on December 1, 2013, becoming month to month at the end of the fixed term. The tenancy ended on March 31, 2019 as the result of the landlord's notice to end tenancy.

The tenant provided the following testimony about her loss of quiet enjoyment. There was an emergency repair to the leaky roof deck of the building requiring access to the rental unit by workers hired by the strata. From September 26, 2018 to October 2, 2019, two industrial dehumidifiers were installed in the rental unit and operated 24/7. The tenant was unable to sleep during this time. The tenant seeks compensation of \$267.50.

The tenant testified that for a total of two months from mid-November to mid-January, 2019, she feels the rental unit was not fit for occupation because of ongoing repairs to the roof deck and to the walls within her rental unit. Her personal items were moved around by construction workers and piled on her bed, forcing her to take them off her

bed when she arrived home from work. There was dust and a constant smell of paint, tar and other noxious gases from the construction making her sick. She lost her privacy because her curtains were taken down as the workers removed the sliding glass door get equipment out to the roof deck. The disruption was so bad that she started staying at work 16-20 hours a day. The tenant went to a doctor who reiterated the tenant's concerns that the construction was preventing the tenant from sleeping and other health effects. The tenant seeks compensation of the value of two months rent, \$2,140.00.

The landlord issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit ("Notice") on November 18, 2018 ending the tenancy on March 31, 2019. A copy of the Notice was provided as evidence. The Notice indicates the tenancy is ending because the landlord is going to:

- Perform renovations or repairs that are so extensive that the rental unit must be vacant.
- I have obtained all permits and approvals required by law to do this work (strata approval)

The work the landlord is planning to do is:

Kitchen	Replace appliances, counters & cupboards
Bathroom	Replace sink & counter, refinish tub
Living area & bedroom	Replace floors & closet

The tenant testified that the landlord did not do all the renovations or repairs set out in the Notice. The tenant submits that the unit did not need to be vacant for the landlord to do the repairs or renovations and that the landlord had an ulterior motive to ending the tenancy. To corroborate this argument, the tenant notes that she was given a notice of rent increase some time before the Notice was given and that after the renovations were done, the unit was listed for sale. A copy of the listing was provided as evidence. The tenant submits that she is entitled to 12 months compensation because the landlord did not take the steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice. The tenant testified that since the cupboard boxes weren't replaced and all of the flooring wasn't replaced, the renovations or repairs weren't accomplished.

The landlord gave the following testimony. There were two emergency building repairs requiring access to the roof deck through the rental unit. There was a blocked drain on the roof causing water damage to 14 units, including a small section of the subject rental unit which required dehumidifiers. The unit is very small, making it challenging to repair because the tenant had many belongings within the small space. The landlord maintained constant communication with the tenant and the contractors to try and

coordinate the work for when the tenant was away. The landlord submits that she fulfilled her obligation to reduce the impact of the work on her tenant. The roof repair had to be done as it was the strata corporation pursuing the repairs to the common property and the landlord did not control the access to the roof through the rental unit. She maintains that she did whatever she could to minimize the disturbance to the tenant by ensuring the workers provided sufficient notice to the tenant of their entry into the rental unit. The landlord also testified that she advised the tenant to contact her insurance provider to see if they would provide assistance.

The tenant testified she did not purchase tenant insurance as she thought that insurance would only cover replacement of her belongings if they were damaged in a catastrophic event such as a fire or a hurricane. As she didn't believe her belongings were worth insuring, she never bothered to purchase insurance. The landlord testified the repairs being done the building roof and membrane were covered by the strata corporation's insurance.

Regarding the tenant's claim for not accomplishing the stated purpose for ending the tenancy, the landlord submits that the scope of the work stated on the Notice was completed. Repairs and renovations were started immediately after the tenancy ended on March 31st and were completed during April and early May 2019.

The floors in the kitchen and bathroom were replaced, however she was able to repair the hallway floors even though the strata's contractor advised they would require replacement. The cupboards boxes were in better shape than she thought, so they were sanded, refinished and repainted and new doors were put on them. Everything else stated on the Notice was done. In evidence, the landlord provided photographs of the rental unit before and after the renovations were done.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts

occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

First, the tenant claims the landlord breached her sec. 28 right quiet enjoyment of the rental unit.

Residential Tenancy Policy Guideline PG-6 sets out the basis for finding a 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.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Residential Tenancy Policy Guideline PG-21 [Repair orders respecting strata properties] states:

The *Strata Property Act* sets out the duties of the strata corporation and the owners in respect of the property. Section 72(1) requires a strata

corporation to “repair and maintain common property and common assets”. Section 72(2) permits a strata corporation, by by-law, to make an owner responsible for the repair and maintenance of limited common property that the owner has a right to use.

...

An owner has no power to do work on the common areas of the development, save and except for areas of exclusive use common property or limited common property as required by the by-laws. The dividing line between the strata lot and the common areas is usually the mid point of the exterior walls of the strata lot. **Any repairs such as the repair of water leaks originating in the common areas is the responsibility of the strata corporation.**

In this case, I find the tenant did suffer while repairs were being done to the common areas of the building, however I do not find the landlord failed to protect the tenant’s entitlement to quiet enjoyment of the rental unit. The evidence plainly shows the strata corporation was obligated to repair and maintain the common property and common assets of the building, not the landlord. While I am sympathetic to the disturbances caused to the tenant, I do not find the landlord was responsible for them.

Further, in reading the correspondence between the parties and with the strata corporation and contractors, I find the landlord took reasonable steps to provide the tenant with the least amount of discomfort, given her inability to directly control the repairs being done by the contractors hired by the strata corporation. Again, the tenant’s entitlement to quiet enjoyment is being balanced against the strata’s obligation to maintain the common property and prevent ongoing damage to the building.

In the correspondence provided as evidence, the landlord asks the tenant whether her tenant’s insurance would provide assistance to her during the repairs to the roof. The landlord testified she received no response to the question, however in testimony the tenant testified she did not purchase tenant insurance. I find it altogether reasonable that had she purchased tenant insurance, the tenant would have had her living expenses covered by her insurer while her rental unit was undergoing the disruption of the repairs to the roof. The tenant made a choice to forego tenant insurance that likely would have covered her living expenses while the emergency repairs were being completed. By failing to purchase tenant insurance, I find the tenant failed to mitigate her damages.

For the reasons cited above, the tenant's claim for compensation for the landlord's breach of the tenant's entitlement to quiet enjoyment is dismissed.

Second, the tenant seeks compensation pursuant to section 51 of the *Act* because the landlord did not take the steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice. The tenant claims that the landlord had an ulterior motive to ending the tenancy and the Notice was not given in good faith. The tenant points to the rent increases provided to her before the Notice given and the listing of the rental unit after renovations were done as evidence of the landlord's lack of good faith.

Pursuant to section 49 of the *Act*, the good faith of the landlord in doing renovations or repairs can be questioned by the tenant **if the tenant chooses to dispute the eviction**. The good faith and motives of the landlord can be disputed at a hearing before the director's delegate whereby the landlord must be able to prove the renovations or repairs require vacant possession. When a tenant chooses not to fight the eviction and moves out of the rental unit in accordance with the Notice to End Tenancy, the good faith of the landlord is no longer in dispute.

The tenant's remedy for compensation lies in section 51 of the *Act*. Pursuant to section 51, the tenant may seek compensation from the landlord if the landlord has not taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

PG-50 [Compensation for Ending a Tenancy] indicates the test for awarding compensation is determined by 3 factors:

Were steps taken to accomplish the stated purpose?

Were they done in a reasonable period?

Did they accomplish the purpose?

I find the landlord took the steps to accomplish the stated purpose. The "before" pictures provided by the landlord depict a rental unit that appears markedly different from the "after pictures". If the landlord had not done the renovations and repairs, there would be no discernable difference between the two. I am satisfied the scope of the work noted on the landlord's Notice was completed.

The renovations or repairs were done in a reasonable period. I accept the landlord's testimony that renovations were done immediately after the tenancy ended, by early

April 2019. The tenant has not provided sufficient evidence to the contrary. I find that, on a balance of probabilities, the tenant has failed to satisfy me that there was any delay in performing the renovations or repairs to the rental unit.

From the photographs provided by both the landlord and the tenant, the testimony of the landlord and her written submissions, I find the scope of the work cited on the Notice was accomplished. I accept the landlord's testimony that the cupboard boxes and floors were in better condition than originally perceived and that her ability to accurately determine the condition of both was hampered because the tenant's possessions were in the rental unit.

From the Notice:

Kitchen	Replace appliances, counters & cupboards	Done
Bathroom	Replace sink & counter, refinish tub	Done & refinished instead of replaced
Living area & bedroom	Replace floors & closet	Done

The tenant has failed to satisfy me steps have not been taken by the landlord, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy.

The tenant's application to be compensated for the landlord's failure to take steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy is dismissed.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The tenant's application is dismissed 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 *Residential Tenancy Act*.

Dated: January 17, 2020

Residential Tenancy Branch