Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EWALD ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed September 8, 2020, wherein the Landlord sought monetary compensation from the Tenant in the amount of $35,100.00 for damage to the rental unit as well as recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 18, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The corporate Landlord was represented by the Property Manager, W.C. and the Owner, W.T.S.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

During the hearing the Tenant referred to five previous applications before the Residential Tenancy Branch. I advised the parties I would review those files in making this my Decision. The file numbers for those matters is included on the unpublished cover page of this my Decision.

Preliminary Matters

The Landlord provided in evidence documents which indicated the estimated cost to repair the rental unit flooring exceeded the monetary jurisdiction of the Residential Tenancy Branch as provided for in section 58(2)(a) of the *Residential Tenancy Act* (the *"Act*"). The Landlord's representatives were given the option of withdrawing the Landlord's claim and pursuing the matter in the B.C. Supreme Court. The Landlord's representatives confirmed the Landlord wished to abandon any amounts over the $35,000.00 limit in order to have the matter resolved at the Residential Tenancy Branch.

The hearing of the Landlord's Application concluded on December 18, 2020. This Decision was rendered on January 20, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for cleaning and repair costs?

2. Should the Landlord recover the filing fee?

Background and Evidence

This 19-year tenancy began July 2001 and ended at the end of October 2020.

The Landlord requested $35,000.00 in compensation from the Tenant for cleaning costs, the cost to remove the Tenant's personal items, as well as the estimated cost to repair damage to rental unit.

The most significant portion of the Landlord's claim related to the cost to repair damage to the flooring and subfloor. The Landlord alleged the damage was caused by the Tenant's pet's urine and faeces, as well as the kitchen sink overflowing. The Landlord's representatives testified that this damage was so extensive it made its way to the unit below. The Landlord provided numerous photos of the rental unit which showed extensive damage to the flooring and subflooring. The Landlord also provided in evidence two quotes for the repairs, one in the amount of $32,000.00 and $45,000.00.

The Property Manager confirmed that the one for $32,000.00 did not included the damage to the unit below or the hazardous waste removal fees.

The Property Manager claimed that they did regular inspections of the unit and attempted to end the tenancy on several occasions over the course of ten years. He further stated that on four separate occasions the Landlord issued a notice to end the tenancy and each time the Tenant was successful in disputing the applications at the Residential Tenancy Branch.

In the most recent hearing on July 28, 2020, the tenancy was ended pursuant to a notice to end tenancy for cause. In the Decision, the Arbitrator found the following:

> "The photographs are very graphic and paint a disturbing picture. There is dog faeces in multiple areas, and it is obvious that the flooring is rotting away…
>
> I find that the tenant does not recognise the seriousness of the consequences of maintaining the rental unit in such a condition…
>
> [by] denying the appalling condition of the unit and continuing to maintain that it is clean, odourless and devoid of dog faeces/urine, the tenant does not intend to improve the condition of the unit as he does not see any need to do so.
>
> Therefore, the tenant and his dog will continue to engage in activity that will adversely affect or jeopardize his own health, safety and physical well-being and that of other residents of the building. This activity is also likely to cause additional extraordinary damage to the rental unit…"

W.C. stated that when the tenancy finally ended, the Tenant failed to clean the rental unit and left most of his belongings. As such the Landlord incurred the $526.00 cost of cleaning the rental unit and the $1,360.00 cost to remove the Tenants' belongings.

In response to the Landlord's claim, the Tenant testified as follows.

The Tenant stated that the damage to the flooring was caused due to water leaks in the rental unit, the most significant being when the sink overflowed after he left the water on and the drain was plugged with a plastic bag. He confirmed he was unaware of this as it occurred in the middle of the night. He claimed that he cleaned it up as quickly as possible, but the water had made its way into the lower unit (according to information he received from the Landlord at the time). He argued that the damage to the floor was a result of the fact the Landlord never attended to the repairs and remediation such that the flooring and subfloor began to buckle.

The Tenant also claimed that the building was built in 1954 and the floors were original. The Tenant stated that when he first moved in the floors were immaculate as the previous owners took great care of the rental building, but when the new Owner, W.T.S., took over, she did not take care of the building. He also confirmed that the wood floors were not refinished during his 19-year tenancy, nor was the tile replaced despite both being well over 20 years old.

The Tenant stated that for 15 years he asked for repairs to the suite and the Landlord ignored his requests and neglected to attend to these repairs. He noted that he has made numerous applications to the Residential Tenancy Branch, yet the Landlord has not attended to the required repairs and has let the rental unit fall into disrepair. The Tenant also stated that the Landlord was ordered to make repairs and did not complete them as required.

In addition to the flooding caused by the kitchen sink, the Tenant stated that the fridge also leaked, and the Landlord did not attend to these repairs either. He confirmed that he told the Owner, W.T.S., numerous times about the leaking and she did not attend to this. He also estimated the fridge as being over 20 years old.

The Tenant confirmed that he had his dog for 13 years. He claimed he took his dog out 3-4 times a day and stated that when his dog has an accident, he tries to clean it up right away.

The Tenant also testified that he did not have enough time to move out and clean properly as he only had 15 days. He stated that he didn't have the finances to move his items to storage as he is on disability and is of extremely limited means.

The Tenant's father, T.P., testified as follows. He stated that the Tenant made numerous requests for the Landlord to repair the rental unit. He noted that the Tenant also made five separate applications to the Residential Tenancy Branch, beginning in 2011, wherein the Tenant requested Orders that the Landlord make repairs, emergency, and otherwise. T.P. claimed that the Landlord was ordered to make repairs to the rental unit and ignored the orders.

T.P. testified that the rental unit has not been "touched in 19 years". He noted that there was a leak in the kitchen and the Landlord did nothing to attend to this. He further claimed that the suite is in disrepair as they completely neglected to do any maintenance or repairs in nearly 20 years. T.P. stated that he personally had to replace

the toilet, paint the walls and fix the sink as the Landlord failed to deal with it. T.P. also stated that the Landlord never came by to inspect the unit as they testified.

In reply, the Owner, W.T.S., testified as follows. She confirmed that for over 15 years she was in charge of the building. She claimed she did regular inspections of the unit ever couple of months. She also stated that the rental unit was "not fine" as the floors were damaged, but they "could not do anything". She claimed that the Tenant was not able to maintain the suite and they tried to evict the Tenant on numerous occasions.

The Owner also stated that the fridge didn't leak, and the kitchen sink also did not leak. The Owner also stated that she complied with any orders to attend to repairs and that each time they went to check on the Tenant's requested repairs they were not needed.

The Owner claimed that the floor was totally ruined because the Tenant did not know how to keep the floor dry. She also stated they could not refinish the floors because it smelled so badly of dog urine and the crew refused to go in the rental unit due to the condition.

The Owner also testified that each time the situation got worse and they were only finally able to evict him this summer.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

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. In this case, the Landlord has the burden of proof to prove their claim.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

> **37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
>
> (2) When a tenant vacates a rental unit, the tenant must
>
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I will first address the Landlord's claim for compensation for cleaning costs and the cost to remove the Tenant's items. The photos submitted by the Landlord indicate the rental unit was not left clean as required by section 37 of the *Act.* I find the amounts claimed by the Landlord to be reasonable, and as such I award the Landlord compensation in the amount of **$526.00** for the cost to clean the rental unit.

The Tenant conceded that he was not able to remove all of his items as he could not afford to hiring movers. The photos submitted by the Landlord show numerous items left by the Tenant. I am also satisfied the amounts claimed by the Landlord are reasonable considering the number of items left and I award the Landlord compensation in the amount of **$1,360.00** for the cost of removal.

The most significant portion of the Landlord's claim relates to the condition of the rental floors. The photos submitted in evidence before me confirm the photos are in an appalling condition.

Branch records indicate that there is a long history of the tenant requesting repairs, and a long history of repair request hearings before the Residential Tenancy Branch where those repairs were not addressed due to intervening notices to end tenancy.

The Owner testified that she was responsible for the rental unit for the past 15 years. She also claimed that she performed inspections of the rental unit every three months. She stated that she attended each time the Tenant requested repairs and determined those repairs were not required. The Owner also stated that there was nothing they could do as they attempted to evict the Tenant and were only able to do so in the summer of 2020.

As noted above, pursuant to section 32(1) of the *Act,* and section 8 of the *Regulation,* a Landlord is required to maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards as required by law and is suitable for occupation. I find the Landlord has not honoured those obligations.

The undisputed evidence is that this Tenant has made a request for repairs since at least 2011. There was no evidence before me, aside from the Owner's testimony, that the Landlord has attended to these repairs.

I was not able to review the 2011 Application materials as it was cancelled prior to the hearing and those records were not readily available to me; however I was able to determine that the Tenant made the Application and requested an Order canceling a 1 Month Notice to End Tenancy for Cause, as well as an Order that the Landlord make repairs, emergency and otherwise. Branch records indicate the hearing was cancelled as the Landlord withdrew the notice to end tenancy.

A further Application was made by the Tenant in 2013 in which the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause, and requested an order

that the Landlord make repairs, emergency and otherwise to the rental unit (other relief was requested which is not relevant to the issues before me). The Decision indicates that Tenant alleged in the 2013 hearing that the Landlord was not maintaining the rental unit, that the floors were in poor condition, that the tile in the kitchen were in "very bad condition", and the bathtub and refrigerator were leaking. At that time the Landlord alleged that the floor damage was due to the Tenant's pet and testified that the floor and subfloor were buckling. (It is notable that the parties' positions at the hearing before me over 7 years later were the same.) The Arbitrator did not end the tenancy, as they were unable to find who was responsible for the floor damage, and declined the Tenant's request for a repair order as the Arbitrator accepted the Landlord's assurance that he would make the required repairs.

In 2016 the Tenant made yet another Application before the Residential Tenancy Branch. Again, the Tenant sought to cancel a notice to end tenancy; this time the notice was for the Landlord's use. Again, the Tenant sought an Order that the Landlord make repairs, emergency and otherwise; in his Application he wrote that the Landlord had not completed the required repairs. The Arbitrator exercised his discretion and dealt only with the notice to end tenancy such that the merits of the Tenant's request for a repair order was not considered. In that case the Arbitrator found the Landlord had an ulterior motive and canceled the 2 Month Notice for Landlord's Use.

In May of 2020, the parties attended yet another hearing before the Residential Tenancy Branch. Again, the Tenant sought to cancel a 1 Month Notice for Cause as well as requesting an Order that the Landlord make repairs to the rental unit. In this case the Tenant also sought an Order for a rent reduction. The Arbitrator exercised their discretion and dealt only with the notice to end tenancy; as a result the Tenant's repair request was not considered. The Landlord failed to call into the hearing on May 7, 2020 and the Arbitrator canceled the notice.

As noted, the parties attended a hearing on July 28, 2020 at which time the tenancy ended pursuant to a 1 Month Notice to End Tenancy for Cause.

The above confirms that for at least nine years the Tenant has made formal requests that the Landlord make repairs to the rental unit. In the 2013 hearing, the Arbitrator accepted the Landlord's assurance that the repairs would be completed. Yet, the inescapable conclusion upon review of the photos submitted in the hearing before me is that no such repairs have been done. The photos submitted in evidence for the 2013 hearing confirm the Tenant's testimony before me that the flooring was not updated during this tenancy. The tiles are the same and the only difference is that their condition

has worsened. The Owner testified there was nothing they could do. I disagree. There was no evidence before me that the Tenant prevented the repairs from being undertaken in the nine years he asked the Landlord to do *something.*

The photos submitted in evidence confirm that the damage to the rental unit floors is extraordinary. I am not persuaded it was solely due to the Tenant's dog. Nor do I accept the Landlord's evidence that the Tenant simply did not know how to keep the floors dry or maintain them. I find it more likely the damage to the rental unit was a combination of factors, including the Tenant's actions or neglect. I find the Landlord is also responsible for the current condition. I accept the Tenant's testimony that the rental unit experienced flooding from an overflowing kitchen sink. I also accept the Tenant's testimony that the refrigerator was leaking. I further accept the Tenant's testimony, as well as that of his father, that the Landlord did not attend to the necessary repairs when the unit experienced flooding. The photos also confirm that the damage to the rental unit floors did not occur as a result of a single recent event; rather, the floors have deteriorated over significant time.

While it is not possible to look back with 100% accuracy, I find it likely that had the Landlord attended to the required repairs in 2011, 2013, and 2016 the floors would not be in the condition as depicted in the current photos. The cost of repairs at any of those times would likely have been far less than that which is being requested by the Landlord today.

A tenancy is a mutual relationship. Both parties have a duty to maintain the rental unit as set out in section 32 of the *Act*. Clearly the Tenant has personal issues which impact his ability to see the rental unit as it is. However, the evidence is also clear the Tenant asked for many years that the Landlord to attend to required and emergency repairs. Although the merits of those requests were not considered at any of the hearings before the Branch, the Landlord cannot assert she was unaware the Tenant requested repairs to the rental unit. Nor can a third party viewing the photos submitted in evidence conclude that the rental unit was not in need of some repair. A landlord must also honour their obligation to repair and maintain the rental unit and in this case, I find the Landlord failed to honour this obligation.

On balance, I find the Landlord has failed to prove the Tenant is solely responsible for the current condition of the floors. Branch records confirm that the floors were buckling as early as 2013, yet there was no evidence the Landlord made any effort to attend to required repairs. I am persuaded by the Tenant's father's testimony, and the photos submitted in evidence, that the Landlord allowed the rental unit to fall into disrepair.

And, in failing to repair and maintain the unit, I find the Landlord also failed to mitigate their losses.

I therefore find the Landlord has failed to meet the burden of proving this portion of their claim on a balance of probabilities and I dismiss the Landlord's claim for the cost to repair the floors.

As the Landlord has been partially successful in this Application, I award them recover of the $100.00 filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **$1,986.00** for the following:

Cleaning costs	$526.00
Cost to remove Tenant's items left at rental unit	$1,360.00
Filing fee	$100.00
TOTAL AWARDED	**$1,986.00**

The Landlord is granted a Monetary Order in the amount of **$1,986.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Court).

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 20, 2021

Residential Tenancy Branch