



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, RP, OLC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on January 20, 2021, wherein the Tenant requested the following relief:

- an Order that the Landlord:
 - make repairs to the rental unit; and,
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
- an Order permitting the Tenant to reduce their rent by the cost of repairs services or facilities; and,
- monetary compensation from the Landlord;

The hearing was conducted by teleconference at 1:30 p.m. on April 16, 2021. 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 parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

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.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on April 16, 2021. This Decision was rendered on May 19, 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.

Preliminary Matter—Relief Sought

At the outset of the hearing the Tenant confirmed the Landlord had repaired the front lock and installed an awning over the door such that her request for an Order that the Landlord make repairs was no longer required. Accordingly, I dismiss that portion of the Tenant's claim.

Issues to be Decided

1. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement.
2. Is the Tenant entitled to monetary compensation from the Landlord?
3. Should the Tenant recover the filing fee?

Background and Evidence

The Tenant testified as follows. She stated that she lives in a coach home above a garage. The tenancy began September 1, 2019. Monthly rent is currently \$980.00.

The Tenant's claim arises from her concerns about the stacking washer and dryer unit in the rental unit. She claimed that both were malfunctioning. The first issue she noticed was in September of 2020 when she noticed moisture in the rental unit while she was using the dryer; she further testified that every time she used the dryer she was forced to use a dehumidifier and three fans as well as opening all the windows. She

stated that she told the Landlord what was happening, and he came to inspect, following which he hired a tradesperson to clean out the lint on January 11, 2021. The Tenant claimed that the person hired stated that it was the worst lint he had ever seen. She confirmed that she always cleaned out the lint trap every use.

The Tenant alleged that after the lint was cleaned out the dryer it still did not properly dry the clothing. The Tenant alleged that it originally took 4-5 hours to dry, and now takes about 2 hours. She stated that she only does a small to medium sized load.

The Tenant stated that the washing machine creates little white specks which is woven into her clothing and which is then embedded by drying.

The Tenant alleged she lost \$500.00 in clothing. She stated that she lost approximately 40% of her work attire, including six pairs of pants and numerous sweaters. She stated that she has used lint rollers and a "machine" that removes lint but some of them were not savable.

The Tenant also sought \$500.00 from the Landlord because she "is angry that he risked her life by not cleaning out the lint". She also stated that she had numerous sinus infections due to the humidity in the rental unit. She confirmed that she asked for the \$500.00 to ensure that she was heard, not because she wanted the money, but to ensure he knew that he breached his obligations by not cleaning the vent.

In response the Landlord testified as follows.

The Landlord stated that the first time he was aware there were issues with the washer and dryer was in September of 2020. He stated that he immediately attended, looked at the dryer, and realized the venting had come off the back of the machine and the air was being blown back into the house. The Landlord then reconnected it and cleaned up all the lint that accumulated on the wall. He continued that approximately a week later he attended as the Tenant felt the machine was still not working optimally. At that time he used his vacuum to remove any lint. Two months later in late December of 2020 the Tenant again stated that her clothes were not drying properly, but the room was not full of moisture like before. At that time, the Landlord hired a professional and on January 16, 2021 the Landlord had a repair person clean the vents. He claimed that ever since then he had not heard from the Tenant regarding the dryer.

In terms of the washing machine, the Landlord stated that this was "somewhat later" than the dryer issue. He stated that the Tenant alleged that she was seeing "white

specks” and initially he thought it might be because of the lint that was flying around. The Landlord then had a repairperson come to look at the washing machine. They looked at it and thought it was powdered laundry residue or deteriorating plastic. The Landlord claimed that as of March 17, 2021 he had not heard from the Tenant in terms of the washer.

The Landlord stated that the washer and dryer came with the rental property when he purchased it in June 5, 2014. He was unsure of their age.

The tenant confirmed during the hearing that she would provided a photo of the serial number for both the washer and dryer so the Landlord could ascertain the age of the units.

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 Tenant 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 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.

The parties agreed that the issues with the dryer began in September of 2020, approximately one year after this tenancy began. I am satisfied that immediately upon being informed of the issue with the dryer, the Landlord attended the rental unit and reconnected the dryer vent. As the Tenant did not notice an issue with the dryer prior to this date, on balance I find it likely the vent became detached shortly before September 2020.

As noted above, to be successful in her claim the Tenant must prove the Landlord breached the *Act* or the tenancy agreement through his actions or negligence. In this case, I find the Tenant has failed to provide sufficient proof that the Landlord breached his obligations. I find that he promptly responded to the Tenant's concerns and took corrective action. In doing so, I find he satisfied his obligations under the legislation. I am also not satisfied he was responsible for the dryer vent detaching. I therefore find the Tenant has not proven this essential element.

While the Tenant stated that she only requested \$500.00 to make a point and ensure the Landlord was aware of her concerns about the risk posed by the accumulation of lint, I note that I would have dismissed this portion of her claim in any event. I find the Tenant failed to prove the Landlord breached the legislation or the tenancy agreement, and the Tenant failed to provide any legal basis for this sum.

The Tenant alleges the washing machine leaves small white flecks on her clothing. In this respect she claimed \$500.00 for loss of clothing alleging the flecks could not be removed. In support she provided photos of a brown sweater and two black tops. She did not provide any receipts or supporting documentation for this amount. The flecks on the sweater look to be "pilling" from the acrylic material used to make the sweater. This is a normal result of washing and precisely why most knits are to be handwashed. The

flecks on the black items look similar. On balance, I find the Tenant has provided insufficient evidence to support a finding that these flecks are a result of a malfunctioning washing machine.

Even in the event the flecks are caused by the washing machine, which I have not found, I am not satisfied the Tenant has proved her monetary claim for \$500.00. Notably, the Tenant failed to provide any receipts or estimates for the replacement of her clothing and as such I find as she provided insufficient evidence to support the \$500.00 claimed. I therefore dismiss her claim in this respect.

The Tenant agreed to provide the Landlord with the serial numbers for the washer and dryer unit. The parties are encouraged to consider *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides that a clothes washer and dryer have a 15 year useful life in terms of whether further repairs are warranted or whether the units should be replaced.

Conclusion

The Tenant's claim is dismissed.

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: May 19, 2021

Residential Tenancy Branch