



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, RR, MNDCT (primary application)**
 PSF, MNDCT, OLC, RR, AS, LAT, LRE (second application)

Introduction

This hearing dealt with two applications by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;

The tenant attended. The tenant was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlords did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 55 minutes to allow the landlords the

opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The landlords are referenced in the singular.

Throughout the hearing, the tenant stated several times that he has difficulty in carrying out the tasks necessary to bringing an RTB proceeding. He testified that he is a person with a disability; he has challenges with technology and uploading of documents, as well as general organization of materials. The tenant testified that he had tried to get support for issues surrounding the tenancy but had not been successful in getting an advocate or support person. He said he had called the RTB so many times that he knew many of the Information Officers who were familiar with his situation.

The tenant stated that the parties have a written tenancy agreement in which the landlord is stated to be the landlord RF and the agent, the landlord AM. The tenant testified that all his dealings with respect to the 4-year tenancy have been with either the landlord RF or AM at their respective email addresses which appear on the first page. He pays his rent by e-transfer and has never received a receipt.

For the above reasons, the tenant stated he was unable to submit a copy of the tenancy agreement.

The tenant testified that he has never been provided with a street mailing address for the landlord. The tenant stated that he repeatedly asked the landlord for their address so he could serve them. The tenant sent emails to the landlord, copies of which were not submitted. The tenant stated that the landlord did not respond with an address.

To obtain an address, the tenant testified that he searched the Land Titles Registry and obtained the name and mailing address for a numbered company which owns the property in which the unit is located, the name and address appearing on the first page.

The tenant testified that he notified the landlord by email of today's application. He also sent the Notice of Hearing and Application for Dispute Resolution to the landlord by registered mail sent on March 27, 2021 to both separately at the address for the numbered company. The tenant testified as to the tracking number which appears on the first page. The tenant did not submit a copy of the mailing receipt.

Section 89 of the Act provides as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].
[emphasis added]

Under section 90, documents sent by registered mail are deemed received on the fifth day after mailing. Therefore, the documents sent March 27, 2021 would be deemed received five days later, that is, on April 1, 2021.

Section 71(1) of the *Act* authorizes the RTB Director to make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I have considered the testimony of the tenant. I find the tenant's testimony credible and reliable that he informed the landlord by email and by registered mail of the hearing date. Based on the tenant's testimony, I find each of the landlords have been sufficiently served with the Notice of Hearing in accordance with section 71(1)(c) on April 1, 2021.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The tenant stated that he was unable to submit any documents for the hearing because of issues described above.

The tenant provided oral evidence only. He stated that the tenancy began on July 17, 2017. Monthly rent is \$666.25. The tenant provided a security deposit of \$325.00 at the beginning of the tenancy which the landlord holds. The tenant has a written tenancy agreement signed by the landlords.

The tenant stated that the unit is a 1-bedroom basement apartment. There is another apartment on the same level with a single male occupant ("occupant") and a second apartment upstairs.

The tenant described many complaints regarding the tenancy. The tenant testified that the occupant of the other apartment has terrorized the tenant throughout the tenancy resulting in the tenant calling the police "6 to 10 times". This included the occupant shouting and yelling at the tenant, chasing him, and banging on the tenant's ceiling and door. The tenant testified that the occupant has repeatedly told the tenant the occupant wants him to move out and the occupant will not stop until this takes place.

The tenant stated that the unit has mold, mice, a broken window letting cold air into the unit and a persistent water leak. He testified that he has health issues associated with the unsafe and unhealthy condition of the unit including nose bleeds.

The tenant stated that he has filed an upcoming application relating to required repairs and a date has not been set yet for the hearing. The file number is referenced on the first page.

The tenant stated that he has asked to have his lock changed so that other occupants in the building do not have copies.

The tenant testified that he has asked the landlord by email and registered letter to fix the items needing repairs and to change the locks. The landlord has never replied and the issues continue unresolved.

The tenant requested an order that the landlord inspect the unit and provide repairs.

Analysis

Section 13(1) of the Act provides that the landlord must provide the correct legal name of the landlord and “the address for service and telephone number of the landlord or the landlord’s agent”. The section states:

Requirements for tenancy agreements

13 (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;

Further to the tenant’s testimony that he does not have the above information, I direct as follows:

1. the landlord shall provide their correct legal name(s), their address(es) for service and telephone number(s) within 5 days of service of this Order.

Section 32 of the Act sets out the landlord’s duty to repair and maintain, stating 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.

Section 62(3) of the Act states:

The director 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.

Section 26 of the Act authorises the Director to make an order that the tenant deduct rent, stating as follows:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I accept the tenant's testimony that the unit requires repairs. I also find that I am unable to determine the type of repairs needed. The tenant offered to pay/contribute to the cost of repairs, but I am unable based on the evidence before me to determine if that is appropriate or what amount any such contribution should be.

I therefore expand my Order as follows (numbering continuing from above):

2. The landlord shall have the unit inspected within 10 days of the date of this Decision by qualified service provider(s);
3. Within 5 days of the inspection, the service provider(s) shall provide to the parties a written report of the details of the inspection including the current condition of the unit and the sufficiency of the lock as well as recommended required maintenance with associated cost.
4. Within 30 days of the date of the report, the landlord shall carry out the recommended repairs and shall provide written confirmation to the tenant.
5. If the landlord fails to carry out the terms of this Order or any aspect thereof, the tenant may deduct \$400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

I note that the landlord is still required to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section

32 of the *Act*. This obligation is not suspended or set aside because of this Order. The obligations of the landlord under section 32 of the *Act* continue uninterrupted. For clarity, I make the following additional Order pursuant to section 62 of the *Act* (numbering continued from above)

6. The landlord shall do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the *Act*.

The tenant is instructed to serve each of the named landlords as soon as possible by sending a copy of this Order to each of them by email at the email addresses on the first page.

The tenant has requested other relief than an Order for repairs. The balance of the tenant's application is dismissed with leave to reapply.

Conclusion

I order as follows:

1. The landlord and each named respondent to this application shall provide their correct legal name(s), their address(es) for service and telephone number(s) within 5 days of service of this Order.
2. The landlord shall have the unit inspected within 10 days of the date of this Decision by qualified service (maintenance and repair) provider(s).
3. Within 5 days of the inspection, the service provider(s) shall provide to the parties a written report of the details of the inspection including the current condition of the unit and the sufficiency of the lock as well as recommended required maintenance with associated cost.
4. Within 30 days of the date of the report, the landlord shall complete the recommended repairs providing notice to the tenant in compliance with the *Act* and shall provide written confirmation of completion to the tenant.
5. If the landlord fails to carry out the terms of this Order or any aspect thereof, the tenant may deduct \$400.00 from his rent payable on the next due date following the non-compliance and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.
6. The landlord shall do whatever is necessary to provide and maintain the rental unit in a state of repair that makes it suitable for occupation by the tenant in accordance with section 32 of the *Act*.

I find I am unable to assess serious issues affecting the tenant. I direct the landlord to immediately provide a copy of this Decision and Order to the Public Guardian and Trustee as follows:

Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
Vancouver, British Columbia V6C 3L3
Ph: 604.660.4444
Fax: 604.660.0374

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: June 09, 2021

Residential Tenancy Branch