



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDCT, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed April 29, 2021, wherein the Tenant sought the following relief:

- an Order restricting the Landlord's right to enter the rental unit;
- an Order that the Landlord provide services or facilities;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement;
- an Order for monetary compensation from the Landlord; and,
- an Order that the Landlord make repairs to the rental unit.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on September 2, 2021. Only the Tenant and her friend, R.L., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord did not call into this hearing, although I left the teleconference hearing connection open until 11:36 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant, her friend, and I were the only ones who had called into this teleconference.

As the Landlord did not call in, I considered service of the Tenant's hearing package. The Tenant testified that she dropped off the Notice of hearing, her application, and all evidence in support of her claim at the address provided by the Landlord. She stated that she also sent the materials to him by registered mail on May 13, 2021; the tracking number for the package is included on the unpublished cover page of this my Decision.

Information provided by Canada Post confirms that the Tenant's hearing package was delivered to the Landlord on May 19, 2021; as such, I find the Landlord was duly served as of May 19, 2021 and I proceeded with the hearing in their absence.

The Tenant and R.L. were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*; in response, they confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Tenant and R.L. and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an Order restricting the Landlord's right to enter the rental unit?
2. Is the Tenant entitled to an Order that the Landlord provide services or facilities?
3. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement?
4. Is the Tenant entitled to an Order for monetary compensation from the Landlord?
5. Is the Tenant entitled to an Order that the Landlord make repairs to the rental unit?

Background and Evidence

The Tenant testified that she moved into the rental unit approximately 10 years ago. In 2021 a new owner, the Landlord named in this Application, took over ownership of the property.

The nature of the Tenant's claim relates to concerns she has regarding the Landlord's access to her unit, as well as the lack of heat, adequate water pressure/temperature at the rental unit.

The Tenant sought an Order restricting the Landlord's right to enter the rental unit as she is undergoing chemotherapy and the Landlord's unannounced and frequent attendances to the rental unit negatively impact her health. She stated that she has tried to discuss this issue with him, yet he continues to enter her unit without adequate notice.

The Tenant also sought Orders with respect to the heat, water pressure/temperature at the rental unit. The Tenant's agent testified that the heat, water pressure and temperature were fine until approximately April 2021 when the Landlord turned the heat and water temperature and pressure down to such an extent that the rental unit was cold, and the Tenant was not able to have a shower. They accessed the basement to correct the issue and then in June 2021 the Landlord again turned the water pressure and temperature down. At that time the outside temperature had increased such that the lack of heat was not an issue, however, the lack of hot water and sufficient water pressure remained problematic.

The Tenant stated that the Landlord has since restricted her access to the basement, even though it is vacant. She also stated that she did not believe he had taken any steps to correct the change in water temperature and pressure as it is his intention to tear the house down and develop the entire block.

Tenant sought an Order that the Landlord permit her access to the basement to adjust the heat and water temperature/pressure as needed, as well as monetary compensation for lack of these utilities from April to June 2021. More specifically, the Tenant sought \$700.00 per month for loss of heat, hot water and water pressure for the months April, May, and June 2021 for a total of \$2,100.00. The Tenant testified that she raised this issue with the Landlord repeatedly, as well as the necessity for her to have adequate heat and hot water considering her health issues, yet he took no steps to resolve the issue. The Tenant further testified that she believes he does not wish to spend any money on the home as he intends to develop the property.

The Tenant also testified that she was forced to pay \$300.00 for a new lock as the lock on her rental unit door was not working. Again, she stated that she asked the Landlord to attend to this and he refused, following which she attended to its replacement. In support the Tenant provided a copy of a cheque she wrote for the replacement cost.

Analysis

After consideration of the Tenant's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

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.

I accept the Tenant's testimony that the Landlord has entered her rental unit without giving her proper notice of such entry. I also accept her testimony that this is particularly upsetting for her as she is undergoing chemotherapy as cancer treatment. I therefore Order as follows:

1. The Landlord shall comply with section 29 of the Act, which reads as follows:

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i)the purpose for entering, which must be reasonable;

(ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c)the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d)the landlord has an order of the director authorizing the entry;

(e)the tenant has abandoned the rental unit;

(f)an emergency exists and the entry is necessary to protect life or property.

(2)A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I also accept the Tenant's testimony that she was without heat, adequate hot water, and adequate water pressure for three months from April, May, and June 2021 and that this was during a time the Landlord denied her entry to the basement where the controls for these utilities are located.

I therefore Order, pursuant to sections 32 and 62(3) as follows:

2. The Landlord shall ensure the Tenant has uninterrupted access to the basement for the purposes of adjusting the heat, and hot water temperature/pressure and shall at all times, ensure the Tenant has adequate heat and hot water in the rental unit.

I will now address the Tenant's request for monetary compensation from the Landlord. 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. 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

I am satisfied the Tenant was entitled to heat, hot water and water pressure as included in her rental payments. In denying the Tenant these utilities the Landlord is in breach of the *Act* and the tenancy agreement. I therefore find the Tenant is entitled to monetary compensation from the Landlord pursuant to section 65(1)(b) which reads as follows.

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

...
(b) that a tenant must deduct an amount from rent to be expended on maintenance or a repair, or on a service or facility, as ordered by the director;

I award the Tenant monetary compensation from the Landlord in the amount of **\$2,100.00** representing the requested \$700.00 per month reduction in rent for the months April, May, and June 2021 for lack of heat, hot water, and water pressure.

I accept the Tenant's testimony that she paid \$300.00 for a new lock to the exterior door at the rental unit. I also accept her testimony that the Landlord refused her request to repair/replace this lock and that he likely refused as he intends to demolish the home rather than repair it as required. While the Landlord may ultimately wish to demolish the rental unit, until he regains possession of the property, and continues to accept rent from the Tenant, he must honour his obligation to repair and remain the rental unit. In failing to repair or replace the lock, the Landlord has breached his obligations under the *Act*. I therefore award the Tenant the requested **\$300.00** in compensation.

As the Tenant has been substantially successful in her Application, I also award her recovery of the filing fee in the amount **\$100.00**.

The Tenant is entitled to compensation in the amount of **\$2,500.00** for the following:

Compensation for lack of adequate heat, hot water, and water pressure	\$2,100.00
Cost of replacement lock	\$300.00
Filing fee	\$100.00
TOTAL AWARDED	\$2,500.00

In furtherance of this I authorize the Tenant to reduce her next months' rent by until she recovers the \$2,500.00 awarded pursuant to this my Decision.

Conclusion

The Tenant's Application is granted in its entirety.

The Landlord is ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement and in particular must follow section 29 as it relates to the Landlord's right to enter the rental unit.

The Landlord ensure the Tenant has adequate heat, hot water and water pressure and must provide the Tenant with uninterrupted access to the controls for these services/utilities.

The Tenant is entitled to monetary compensation from the Landlord, including compensation for loss of services/utilities, the cost to replace the exterior lock and recovery of the filing fee for a total award of \$2,500.00. To recover this sum, the Tenant may reduce her next month's rent until the \$2,500.00 is repaid to her.

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: September 22, 2021

Residential Tenancy Branch