



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants TH (the tenant) and MH and landlord RL (the landlord) attended the hearing. The tenants were assisted by counsel CL (the counsel). Witness for the landlord CL also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Jurisdiction

The counsel affirmed the tenancy was a commercial agreement, the rental unit was uninhabitable when the tenancy started, and the Act does not apply because the predominant purpose of the tenancy agreement was to renovate the rental unit.

The landlord stated the tenancy was a residential agreement, the tenant was responsible for minor renovation work and the rental unit was inhabitable when the tenancy started.

The tenant testified the tenancy started on November 01, 2019. The landlord said the tenancy started in October or November 2019. Both parties agreed the tenants paid monthly rent of \$1,600.00 from April 01, 2020 to March 31, 2021 and that the tenancy ended on March 31, 2021. Both parties agreed there was a verbal agreement from the beginning of the tenancy until March 31, 2020 and that the tenants did not pay rent until March 31, 2020 as compensation for the renovation work.

The tenancy agreement dated March 21, 2020 was submitted into evidence. It indicates the fixed-term tenancy started on April 01, 2020, ended on March 31, 2020 and that monthly rent was \$2,000.00. The addendum states:

17. ADDENDUM

- 1. a) Rent will be \$2,000/month and will be reduced from April 01, 2020 to March 31, 2021 to the price of \$1,600/month. In return, the tenant(s) will renovate the interior of the house at [rental unit address], within the scope of the tenant(s) abilities, as per the landlords requests.**
- b) Renovations will be completed by December 31, 2020.**
- c) If not completed, the tenant(s) agree to pay the landlord \$3600 by March 31, 2021 as a penalty for not completing the interior renovations. The tenant(s) will also pay full rent of \$2,000/month starting January 01, 2021 if renovations are not complete by date stated above for the remainder of the 1yr lease.**
- [...]**
- 4. Tenant(s) will leave the house clean and in good repair upon leaving at the end of the 1yr lease.**
- 5. Tenant(s) will keep the property in reasonable cleanliness in accordance with Section 32 of the Act.**
- 6. The Tenant(s) agree to pay the damage deposit of \$1,000 when the renovations of [tenancy address] are at a more completed state and subject to walk-thru.**
- 7. No Pets allowed in the rental unit nor on the property.**

(emphasis added)

The tenant affirmed the agreement was to renovate and occupy the rental unit at the same time. The landlord stated the rental unit did not need major renovation, he rented it because the tenant is a carpenter and could use his professional skills to do minor repairs. The landlord's witness testified the tenants intended to buy the rental unit at the end of the tenancy.

The tenant said that he moved with his family to the rental unit in December 2019 after he partially renovated the rental unit for about one month. The landlord affirmed the tenant and his family moved to the unit on November 01, 2019. The counsel stated the rental unit was uninhabitable in November 2019 and that after the tenant completed some renovation work the unit was partially inhabitable in April 2020.

The tenant submitted into evidence 30 photographs taken in November and December 2019. The photograph dated November 26, 2019 shows a bathroom without a toilet. On December 18, 2019 the bathroom had a toilet and a tub. The other photographs dated December 18, 2019 show damaged walls, doors, windows. The photographs dated March 01, 2021 show ongoing renovation work, including the walls, bathroom and kitchen. The landlord submitted photographs showing renovation work, including the walls, kitchen, windows, and stairs.

The tenant testified the rental unit did not comply with health and safety standards, as it did not have a functional bathroom, windows were broken, and walls were damaged. The landlord said the rental unit was inhabitable when the tenancy started but it was not in the greatest condition. The landlord affirmed the rental unit needed drywall repair and that door and windows needed to be replaced. The bathroom and kitchen were in good condition.

The tenant stated he is a red seal cabinet maker, he has a full-time job and renovated the rental unit after his work hours, the tenant worked between 25 and 120 hours per month in the renovation and often left his job earlier to meet with subcontractors. The tenant testified that during the tenancy he suggested further renovation and the landlord accepted the suggested renovation. A copy of the email dated October 12, 2020 (the email) was submitted into evidence:

I am now making a list of things I will do so we are both clear and it is in writing
drywall (hang board, Mud, tape and sand)
Painting (walls, doors, baseboard and window casings)

Framing (interior walls, installation of basement walls)

Finnish (hang interior doors, baseboards, window casing, hand rail and banister, finish upstairs tiling of bathroom shower, upstairs bathroom cabinets, kitchen cabinets, and small vanity for basement bathroom, upstairs flooring)

I will not be doing any of the following: Electrical or plumbing.

I am a red seal cabinet maker, I can hang a light here and there but I will not be running any wires or trouble shooting any junction boxes. I can hook up the sink and dishwasher, but getting the plumbing from point A to point B will be up to a certified plumber, upon further inspection all valves need to be replaced and multiple copper pipes need to be inspected for leaks.

I will not be replacing any windows at this point in the basement due to them being part of the exterior of the house. **The lease Addendum states I am only to do the interior.**

If you want to add things they need to be considered in the timeline which needs to be extended already due to Covid-19 factors, my job schedule for being out of town, and the delay of getting an electrician.

Time that has already been put into the house includes:

Reno of the bathroom upstairs (including demo, flooring prep, drywall removal and installations, installation of new tub, toilet, flooring, tiled shower, framing in new window opening.)

Removal of old flooring throughout the house, both upstairs and down.

switching stairs around

replacement of 2 exterior doors.

replacement of 3 exterior windows, 2 front and bathroom.

removal of old tenants household products / garbage.

Demo of ceiling and walls in basement.

Removal of wall in new kitchen and living room.

Putting new insulation in ceiling and basement walls Installation of new interior doors.

Clean up of the back yard (moving the storage shed, removal of garbage piles, flattening of yard, planting grass, paid to grass seed/fertilizer, pick up arid placement of fire pit rocks, removal of side steps)

This amounts to over 300hr put into [rental unit] since October of 2019. Between work done and conversations had between us as well as products you have not paid for. I feel that the value of time put in, has already far exceeded our current agreement of 4 months free rent and a reduction of \$400/mon, but I am still going to finish the reno. I don't want to hear from you any more saying you are being screwed in this deal. This deal is more than fair for yourself.

Hence why I am backing off from some of the bigger issues that need to be addressed such as electrical and plumbing for I feel this is fair.

No more questioning me on materials needed and where they are being purchased for this has wasted a lot of time, same with useless quotes.

(emphasis added)

The landlord affirmed he agreed to the email suggesting further renovation and that he provided 90 to 95% of the materials needed for the renovation. The payment of the tenant's labour was the reduced rent. The landlord stated he lives 57 kilometres from the rental unit in northern British Columbia, and he did not attend the rental unit often because the tenant was responsible for the renovation and meeting with the subcontractors.

The landlord testified the tenant left the rental unit uninhabitable and he is still conducting further renovation. The parties did not obtain a permit for the renovation.

The counsel said the use of the unit to live does not preclude the tenancy from being considered a commercial tenancy, and that the tenancy agreement addendum establishes a penalty if the renovation was not completed by the end of the tenancy.

Section 4(d) of the Act states:

This Act does not apply to:

- (d) living accommodation included with premises that
 - (i) are primarily occupied for business purposes, and
 - (ii) are rented under a single agreement,

Residential Tenancy Branch Policy Guideline 14 states that the arbitrator will consider the predominant purpose of the use of the premises to determine jurisdiction:

To determine whether the premises are primarily occupied for business purposes or not, an arbitrator will consider what the "predominant purpose" of the use of the premises is.

Some factors used in that consideration are: relative square footage of the business use compared to the residential use, employee and client presence at the premises, and visible evidence of the business use being carried on at the premises

Residential Tenancy Branch Policy Guideline 27 states that the Act may not apply even if the tenant lives in the rental unit:

Commercial Tenancies

The RTA does not apply to living accommodation included with premises that

- i) are primarily occupied for business purposes, and
- (ii) are rented under a single agreement.

Generally, if the primary use is residential, the RTA will apply. For example, if a tenant rents a house to live in, and the house has a detached garage which the tenant runs a small yoga studio out of, the RTA probably applies.

If a tenant rents a shop and small living accommodation under a single agreement and the purpose for renting the property is to run a convenience store, the RTA probably does not apply even if the tenant lives in the accommodation.

(emphasis added)

I accept the uncontested testimony that the tenant renovated the rental unit.

The tenancy agreement and the addendum are not signed by the tenants. However, both the landlord and the tenant referred to it several times during the hearing and did not indicate that they do not agree with the tenancy agreement. Furthermore, the tenant directly referenced the addendum in the email.

The tenant's testimony was more detailed and convincing than the testimony offered by the landlord and his witness.

Based on the tenant's testimony, the photographs submitted by both parties and the email, I find the tenancy started on November 01, 2019, the rental unit was uninhabitable, the tenant partially renovated the rental unit and moved with his family in December 2019.

Based on the tenant's testimony and the email, I find the tenant suggested further renovation in October 2020 and that this renovation was related to the initial renovation work. The landlord approved the renovation and provided 90 to 95% of the materials needed. Furthermore, the tenant indicated in the same email that in the twelve months prior to the email he worked over 300 hours and listed several renovation work concluded.

The landlord considered the tenant's professional skills when the parties agreed to have a tenancy agreement. The landlord lives 57 kilometres from the rental unit in northern British Columbia and was aware that the tenant was conducting renovation work and meeting with subcontractors.

Based on the tenant's testimony, the tenancy agreement and the email, I find the tenant was remunerated for the renovation labour with free rent from November 01, 2019 to March 31, 2020 and reduced rent from April 01, 2020 to March 31, 2021.

In the March 12, 2014 decision from the British Columbia Court of Appeal, *Rhebergen v. Creston Veterinary Clinic Ltd.*, 2014 BCCA 97, Justice Lowry writes:

[54] Generally a court must endeavour to resolve ambiguity in order to determine the mutual intention of the parties to a contract by interpreting the wording of any given clause in the context of the whole of the agreement as well as the factual matrix that gave rise to the agreement and against which it is intended to operate: *Jacobsen v. Bergman*, 2002 BCCA 102, paras. 3-6.

In light of the above remarks, based on the tenant's more convincing testimony, the email, the photographs and the tenancy agreement, I find the parties entered into an ambiguous agreement with the predominant purpose of conducting a major renovation in the rental unit and the secondary purpose of a residential tenancy. I find that the single agreement governed both the renovation and the tenancy, the tenants occupied the rental unit as a way to facilitate the renovation and to be remunerated with free or reduced rent.

Thus, pursuant to section 4(d) of the Act, I have no jurisdiction to hear the landlord's application.

The tenant submitted an application on September 10, 2021 (the number is referenced on the cover page of this decision) for compensation for a monetary loss or other money owed and for the cost of emergency repairs. The hearing of the tenants' application is scheduled for April 29, 2022. The counsel affirmed that both applications are related to the same facts and requested to cross both applications. As I have no jurisdiction to hear this application, I am not crossing the applications.

The landlord must bear the cost of the filing fee.

Conclusion

I decline jurisdiction to consider the landlord's application.

The claim for an authorization to recover the filing fee 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: October 20, 2021

Residential Tenancy Branch