



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, RP, MNDCT, FFT

Introduction:

This hearing was convened in response to two Applications for Dispute Resolution filed by the Tenant.

In one Application for Dispute Resolution the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make repairs, and to recover the fee for filing an Application for Dispute Resolution. The Tenant stated that on July 09, 2021 the Dispute Resolution Package relating to this Application for Dispute Resolution was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents.

In the other Application for Dispute Resolution the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and to recover the fee for filing an Application for Dispute Resolution. The Tenant stated that on July 13, 2021 the Dispute Resolution Package relating to this Application for Dispute Resolution was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents.

On September 29, 2021 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on September 27, 2021. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 05, 2021 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch in regard to the Application for Dispute Resolution that was served to him on July 09, 2021. The Landlord stated that he was unable to serve this evidence to the Tenant, as the address for service provided by the Tenant on this Application for

Dispute Resolution was incorrect. The Tenant agreed that the service address on this Application for Dispute Resolution was incorrect.

The Landlord stated that he could not serve evidence to the Tenant at the rental unit, as the rental unit was not provided as a service address on either Application for Dispute Resolution.

At the hearing the parties were advised that the Landlord's 18 page evidence package could not be considered at these proceedings, as it had not been served to the Tenant.

The Landlord argued that the 18 page evidence package should be accepted as evidence, as the Tenant did not provide a correct service address. I respectfully disagree. I find that the evidence package could have been served to the Tenant by mailing it to the rental unit, which is a method of service permitted by 88(c) of the *Residential Tenancy Act (Act)*. It also could have been served to the correct service address provided in the second Application for Dispute Resolution, as it would be reasonable to conclude that the Tenant would receive evidence served to that address.

As an incorrect service address for the Tenant was provided in the Application for Dispute Resolution that was served to the Landlord on July 13, 2021, I find that the incorrect information may have contributed to the Landlord's failure to serve the 18 page evidence package. In an attempt to provide the Landlord with a fair opportunity to serve evidence to the Tenant, the Landlord was asked if he wished an adjournment for the purposes of re-serving the 18 page evidence package. The Landlord declined the opportunity for an adjournment.

On October 05, 2021 the Landlord submitted 20 pages of evidence to the Residential Tenancy Branch in regard to the Application for Dispute Resolution that was served to him on July 13, 2021. The Landlord stated that he was unable to serve this evidence to the Tenant, as the address for service provided by the Tenant on this Application for Dispute Resolution was a business address, which was closed when he attended that address for the purposes of serving evidence. The Tenant agreed that the service address on this Application for Dispute Resolution is his business address.

The Landlord stated that he did not attempt to mail this evidence package to the business address provided by the Tenant because the Tenant told him that business was no longer operating.

At the hearing the parties were advised that the Landlord's 20 page evidence package would not be considered at these proceedings, as it had not been served to the Tenant. Even if the business at the service address provided by the Tenant was no longer operating, I find that the Landlord could still have served evidence to that address, pursuant to section 88(d) of the *Act*, or he could have mailed it to the rental unit, pursuant to section 88(c) of the *Act*.

The Landlord was not given an opportunity for an adjournment for the purposes of re-serving the 20 page evidence package, as there was no reasonable reason for failing to serve this evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided:

Should a Two Month Notice to End Tenancy for Landlord's Use be set aside?
Is there a need to issue an Order requiring the Landlord to make repairs?
Is the Tenant entitled to compensation for deficiencies with the rental unit?

Background and Evidence:

The Landlord and the Tenant agree that the tenancy began in 2012; that rent of \$1,140.00 is due by the first day of each month; and that the rental unit is located above commercial space.

The Landlord stated that on May 30, 2021 a Two Month Notice to End Tenancy for Landlord's Use was posted on the door of the rental unit. The Tenant stated that this Notice was located on the floor on June 02, 2021.

The Landlord and the Tenant agree that the Two Month Notice to End Tenancy for Landlord's Use declared that the Tenant must vacate the unit by July 31, 2021 because all the conditions of sale have been satisfied and the purchaser has asked the landlord,

in writing, to give this Notice because the purchaser or close family member intends, in good faith, to occupy the rental unit.

The Landlord stated that:

- the building which contains this rental unit was purchased by the New Owner;
- the sale of the property closed on July 01, 2021;
- the Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant because the New Owner told him, verbally, that he wanted to move into the rental unit; and
- the New Owner did not notify him, in writing, of his intent to move into the rental unit.

The New Owner stated that:

- his company purchased the building/rental unit from the Landlord;
- he is the sole owner of the company;
- the sale of the property closed on July 01, 2021;
- he verbally asked the Landlord to serve the Tenant with the Two Month Notice to End Tenancy for Landlord's Use because he wanted his brother to move into the rental unit;
- he did not notify the Landlord, in writing, of his intent to allow his brother to move into the rental unit; and
- he would like his brother to move into the rental unit.

The Tenant applied for an Order requiring the Landlord to respond to a mouse infestation. In support of this application the Tenant stated that:

- he can hear mice above the T-bar ceiling above his rental unit;
- on May 06, 2021 he reported the sounds to the Landlord;
- on May 14, 2021 the Landlord set traps in the ceiling;
- he was home on May 27, 2021 and the Landlord did not inspect the mouse traps on that date;
- when the New Owner inspected the rental unit on August 01, 2021, they could hear mice above the ceiling;
- he has not looked in the ceiling to see if there is evidence of mice; and
- he has seen no evidence of mice in his rental unit.

In response to the mouse infestation, the Landlord stated that:

- on May 06, 2021 the Tenant told the Landlord he could hear mice above the ceiling of the rental unit;
- on May 14, 2021 he set traps above the ceiling;
- he saw no evidence of mice when he set the mouse traps;
- there were no mice in the traps when he checked them on May 27, 2021;
- the Tenant was present when he checked the traps on May 27, 2021;
- he received an inspection report in which the inspector noted there was no sign of a mouse infestation.

The New Owner stated that he did not hear mice when he inspected the unit on August 01, 2021.

The Tenant applied for an Order requiring the Landlord to respond to repair the kitchen faucet. In support of this application the Tenant stated that:

- the damaged faucet was verbally reported to the Landlord on May 14, 2021;
- the faucet does not function properly as the spray hose cannot be pulled from the main portion of the faucet, although it otherwise provides water as it should;
- the faucet does not leak; and
- the photograph he submitted in evidence demonstrates the damage to the faucet.

In response to the kitchen faucet, the Landlord stated that:

- the faucet was working properly when he inspected it on May 14, 2021;
- the faucet does not need to be repaired; and
- the photograph of the base of the faucet submitted in evidence by the Tenant is not representative of the condition of the faucet on May 14, 2021.

The Tenant applied for an Order requiring the Landlord to repair the bathroom sink. In support of this application the Tenant stated that:

- on May 14, 2021 he told the Landlord the bathroom sink was leaking;
- he reported the leaking sink again in a letter dated June 11, 2021;
- the sink was leaking from the drain and he was catching the water in a bucket below the sink;
- and the leak was repaired on August 12, 2021.

In response to the bathroom sink the Landlord stated that:

- the sink was not leaking when he made unrelated repairs in the bathroom in February of 2021
- the leaking sink was not reported to him on May 14, 2021;
- the leaking sink was reported in the letter dated June 11, 2021, which he did not receive until June 16, 2021;
- the New Owner had a plumber repair the sink on August 12, 2021;
- the plumber who repaired the sink told the New Owner that someone had loosened the drain fitting beneath the sink; and
- the plumber would have known that someone intentionally loosened the drain fitting because he is a “professional”.

The New Owner stated that the plumber who repaired the sink on August 12, 2021 told him that the fitting below the sink was loose. The plumber did not tell him that someone intentionally loosened the fitting.

The Tenant submitted a photograph of a bucket beneath the bathroom sink, which was catching water leaking from the drain.

The Tenant applied for an Order requiring the Landlord to repair mold that has accumulated near the bathtub. In support of this application the Tenant stated that:

- a small amount of mold has accumulated at the base of his bathtub near the wall;
- the issue was reported to the Landlord approximately one year ago; and
- the Landlord insists he is responsible for the mold.

In response to the issue of mold the Landlord stated that:

- a small amount of mold has accumulated at the base of the bathtub near the wall;
- he first became aware of the mold at the base of the bathtub in February of 2021, when he was repairing an unrelated matter in the bathroom;
- he believes the mold has accumulated because the Tenant has allowed water to drip onto the floor from the shower; and
- he submitted a copy of a photograph of the mold to the Residential Tenancy Branch.

The Tenant has applied for compensation, in the amount of \$2,850.00, because the Landlord to make the aforementioned repairs in a timely manner.

Analysis:

Section 49(5) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; and the purchaser asks the landlord, in writing, to give notice to end the tenancy because the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit OR the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on May 30, 2021 the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use on the door of the rental unit, which declared that the tenancy was ending pursuant to section 49(5) of the *Residential Tenancy Act (Act)*. When a Landlord serves a notice to end tenancy, the Landlord bears the burden of proving there are grounds to end the tenancy.

On the basis of the undisputed evidence, I find that the New Owner did not ask the Landlord, in writing, to give notice to end the tenancy because he or a close family member of that person, intends in good faith to occupy the rental unit. As the New Owner did not make this request in writing, I find that the Landlord did not have grounds to end this tenancy, pursuant to section 49(5) of the *Act*, when this Two Month Notice to End Tenancy for Landlord's Use was served to the Tenant on May 30, 2021. As the Landlord did not have the right to end this tenancy when the Two Month Notice to End Tenancy for Landlord's Use was served, I grant the Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

I note that I would have set aside the Two Month Notice to End Tenancy for Landlord's Use even if the New Owner had provided the Landlord with written notice of his intent to have his brother move into the rental unit. I would have set aside the Two Month Notice to End Tenancy for Landlord's Use because section 49(5)(c)(ii) of the *Act* allows a purchaser who is a family corporation to request a seller to end a tenancy only if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 49(1) of the *Act* defines a "family corporation" as a corporation in which all the voting shares are owned by one individual or one individual plus one or more of that individual's brother, sister, or close family member. On the basis of the undisputed

testimony of the New Owner, I find that the rental unit was purchased by a numbered company, of which he is the sole owner. I therefore find that the rental unit was purchased by a family corporation, as that term is defined by the *Act*.

Section 49(1) of the *Act* defines “close family member” as the individual's parent, spouse or child, or the parent or child of that individual's spouse. It does not include a brother or a sister. As the New Owner asked that the Two Month Notice to End Tenancy for Landlord's Use be served so his brother could move into the rental unit, which is not permitted by section 49(5)(c)(ii) of the *Act*, the Two Month Notice to End Tenancy for Landlord's Use could, therefore, not be upheld.

I find that the Tenant's Application for Dispute Resolution in which he applied to cancel the Two Month Notice to End Tenancy for Landlord's Use has merit and that he is entitled to recover the fee paid to file this Application.

Section 32(1) of the *Act* requires that a landlord provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. When a tenant applies for an Order requiring the Landlord to make repairs to a rental unit, the tenant bears the burden of proving that the Landlord has not complied with section 32(1) of the *Act*.

I find that the Tenant has failed to establish that there is a mouse infestation in the building. In reaching this conclusion I was influenced by the Tenant's testimony that he has not seen evidence of a mouse infestation. Rather, I find that his conclusion that there are mice is based on noises in the ceiling which he attributes to mouse activity. In concluding that the Tenant submitted insufficient evidence of a mouse infestation, I was further influenced by the Landlord's testimony that on May 14, 2021 he set mouse traps in the ceiling, at which time he saw no evidence of mice and that a home inspector did not find any evidence of mice.

In adjudicating this matter, I have placed little weight on the Tenant's testimony that the Landlord did not check the mouse traps on May 27, 2021. I placed little weight on this submission, as there is no evidence to corroborate the Tenant's testimony that they were checked or to refute the Landlord's testimony that they were checked.

In adjudicating this matter, I have placed no weight on the Tenant's testimony that the New Owner heard mice above the ceiling when he inspected the unit on August 01,

2021. I placed no weight on this testimony because it is refuted by the New Owner.

As the Tenant has submitted insufficient evidence of a mouse infestation, I dismiss his application for an Order requiring the Landlord to address that matter and I also dismiss his claim for compensation in relation to that alleged infestation.

On the basis of the photograph submitted in evidence by the Tenant, I find that the kitchen faucet is damaged and does not work in the proper manner. In the absence of evidence to establish that the kitchen faucet was damaged by the Tenant, I find that the Landlord is required to repair or replace the kitchen faucet, pursuant to section 32(1) of the *Act*. I therefore Order the Landlord to repair or replace the kitchen faucet prior to November 30, 2021.

As the Landlord no longer owns the rental unit, the obligation to repair the kitchen faucet falls to the New Owner, as he became the new landlord when he purchased the rental unit.

I find that any inconvenience related to a delay in repairing the kitchen faucet was relatively minor and I therefore dismiss the Tenant's application for financial compensation in relation to that inconvenience.

On the basis of the undisputed evidence, I find that the leak beneath the bathroom sink has been repaired. I therefore find that it is not necessary to issue an Order requiring the Landlord to repair the leak.

I find that the Tenant has submitted insufficient evidence to establish that he verbally reported the leaking sink to the Landlord on May 14, 2021. In reaching that conclusion I was influenced by the absence of evidence that supports the Tenant's testimony that the sink was reported on that date or that refutes the Landlord's testimony that it was not reported prior to being reported in the letter dated June 11, 2021.

On the basis of the Landlord's testimony that he received written notice of the leaking sink on June 16, 2021, I find that the Landlord had an obligation to arrange to have that sink repaired in a timely manner. As the rental unit was not sold until July 01, 2021, I find that the Landlord had sufficient time to repair the leaking sink prior to July 01, 2021. I find that the Landlord unreasonably delayed repairing the sink, which resulted in the Tenant living with a leaking sink for many weeks.

I find that the unreasonable delay in repairing the sink was a breach of the Tenant's right to quiet enjoyment of the rental unit, as he had to collect wastewater in a bucket. I grant the Tenant compensation of \$200.00 for this breach of his right to quiet enjoyment.

In considering the claim regarding the leaking sink, I have placed no weight on the Landlord's submission that someone intentionally loosened the drain fitting beneath the sink. In reaching this conclusion I was heavily influenced by the New Owner's testimony that the plumber who repaired the leaking sink did not tell him that someone had intentionally loosened the sink. I find that the Landlord's submission that the fitting was intentionally loosened is highly speculative.

On the basis of the undisputed testimony, I find that a small amount of mold has accumulated at the base of the bathtub and the wall. As the Tenant did not submit a photograph of the mold and the Landlord's photograph of the mold was not accepted as evidence for these proceedings, I must rely on the testimony of the parties regarding the amount of mold.

In the absence of evidence to show that the bathtub is leaking, I accept the Landlord's submission that the mold is likely a result of the Tenant failing to dry the area after water leaks from the tub during a shower. I note that it is not uncommon for water to leak onto a floor during a shower if the shower curtain is not placed in the correct position. I also note that small amounts of mold can be remedied with a thorough cleaning.

As the Tenant has submitted insufficient evidence to establish the bathtub is leaking as a result of a plumbing issue, I dismiss his application for an Order requiring the Landlord to address that matter and I also dismiss his claim for compensation in relation to the mold that is accumulating.

I find that the Tenant's Application for Dispute Resolution in which he applied for an Order requiring the Landlord to make repairs has some merit and that he is entitled to recover the fee paid to file this Application.

Conclusion:

The Two Month Notice to End Tenancy for Landlord's Use that is the subject of this dispute is set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

The New Owner is obligated to repair or replace the kitchen faucet on, or before, November 30, 2021.

The Tenant has established a monetary claim of \$400.00, which includes \$200.00 for a breach of his right to quiet enjoyment and \$200.00 as compensation for the cost of filing two Applications for Dispute Resolution. I grant the Tenant a monetary Order for \$400.00, which may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that 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: October 15, 2021

Residential Tenancy Branch