



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, MNDC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied on February 22, 2022 for an order requiring the landlord to make repairs to the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, compensation for a monetary loss or other money owed, and recovery of the cost of the filing fee.

The parties listed on the style of cause page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). 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.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Preliminary Issues and Procedural Matters-

Preliminary Issue #1 –

The tenant did not attend, which caused me to question what role the tenant's agent would provide in the hearing. As to why the tenant did not attend, the agent said the tenant was busy.

The agent said she was a friend of the tenant and was familiar with the tenancy. I instructed the agent that she could provide submissions and arguments, but I would not allow indirect testimony. In other words, the tenant's agent was informed that I would allow her testimony as to any events to which she had direct knowledge, but not allow hearsay evidence. At one point in the hearing, I would not allow the tenant's agent to provide testimony as to supposed statements said by the tenant.

Preliminary Issue #2 –

Due to distracting noise during the hearing, which appeared to be traffic sounds, I inquired of the parties about the source of the sounds. The landlord's agent said she was driving during the hearing. I requested the landlord's agent to ensure that the noise stopped. However, periodically throughout the hearing, the noise continued. At that point, I placed the agent on mute so that the hearing could continue without the distracting noise. The agent could continue to hear the proceedings and was allowed to return when her turn to testify.

Procedural Matter #1-

When discussing service of evidence, the tenant's agent said the landlord was served with the tenant's evidence on March 21, 2022. The landlord's counsel said they did not receive the additional photographs, videos or emails filed by the tenant's agent on May 23, 2022. The tenant's agent then said she did not send the photographs and later said she sent the additional evidence in March 2022. Some of the photographic evidence was labelled, "The condition in May". The tenant's agent had no clear explanation how the photographs taken in May 2022 were sent to the landlord in March 2022.

For these reasons, I find the tenant's agent submitted insufficient and contradictory evidence to demonstrate that they served the landlord with their evidence as required under the Rules. As a result, I have excluded the tenant's photographic and video evidence as well as the emails, with the exception of the two documents submitted on February 22, 2022, and the excluded evidence was given no consideration.

Procedural Matter #2-

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application. I determined the most urgent issues were the tenant's requests for an order requiring the landlord to make repairs to the rental unit and for the landlord to comply with the Act and/or tenancy agreement. This decision is supported by the tenant's evidence which shows the claim originated more than two years prior to the application.

I find that the tenant's request for monetary compensation is not sufficiently related to the other issues and as a result, I dismiss their monetary claim, with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

- Should the landlord be ordered to make repairs to the unit or property and to comply with the Act or tenancy agreement?
- Is the tenant entitled to recovery of the filing fee?

Background and Evidence

According to the written tenancy agreement filed in evidence, this tenancy began on June 1, 2018, for a monthly rent of \$700. The oral evidence indicated that the rental unit was in a three story, 55 year old building.

The tenant's agent submitted that the ceilings in the rental unit and common areas continue to leak, despite many requests to the landlord to make the repairs. The tenant's agent submitted that the roof repair was not successful, due to the continuing leaks in the rental unit and hallways. The agent submitted that the leaks have caused a mould build-up in the rental unit.

The tenant submitted a copy of an email from landlord's agent MC to the tenant and the tenant's agent, dated February 18. In the email MC said they, "honestly disclosed to the tenants the building conditions. Most tenants left the building after I advised them the aging HVAC conditions two years ago". Further, "Second, the building might be teared down in one year." Further, MC wrote, "I honestly disclosed the building condition to tenants and advised them to find a better place to live in". Further, the landlord wrote that the "rent in the building is very low in comparison with market rate. The Developer considered that building conditions in the rent. When the low rent cannot make tenants happy enough, I will cooperative with the tenant to terminate the tenancy".

Response of counsel for landlord –

Counsel submitted that the landlord has a history of making repairs to the residential property and had the roof repaired in November 2021. The landlord submitted invoices beginning in 2018.

Counsel submitted that a lot of the photos of the tenant were from the common areas which the tenant did not have to use to access his rental unit.

Counsel submitted that the residential property was suitable for occupation having regard to the age, character and location of the rental unit, as a roof replacement is not in character with the property.

Counsel submitted that the residential property will eventually be demolished, after their rezoning application has been granted. Filed in evidence were a rezoning application and a project management schedule.

Response of landlord's agent, MC –

MC testified that when the tenant complained about the leak in March 2022, they contacted the contractor who did the roofing repair. The repair contractor inspected the roof and they also inspected the rental unit.

MC confirmed when they entered the rental unit there was plastic taped to the ceiling in the rental unit. MC said there was no leak and did not know why the plastic was taped, having been told by the contractor the taped plastic would not prevent a leak.

MC said that there are only 11 units still occupied in the residential property and every year, the landlord spends about \$30,000 in making repairs.

The landlord's evidence included a series of emails between the landlord and various parties and photographs of the roof and interior ceilings. I have not reproduced the evidence, but will refer to the evidence within this Decision.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 of the Act requires the landlord to make emergency repairs where they are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property; and are made for the purpose of repairing the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit or the electrical system.

I have reviewed the landlord's own evidence, together with the landlord's oral evidence, along with the tenant's accepted evidence. I specifically took into account the landlord's emails.

I find on a balance of probabilities that the landlord submitted insufficient evidence to show that the roof repair was done in a manner that stopped the leak in the tenant's ceiling.

The landlord asserted that the roof was repaired and the ceiling in the rental unit did not leak. I find the landlord's own evidence casts doubt on this assertion. One of the ceilings in the rental unit clearly has a significant amount of taped plastic along with heavy stains surrounding it. It does not make sense that the tenant would tape such a large piece of plastic to his ceiling for no reason.

I have also reviewed the landlord's photographs of the repaired roof. The photos show a patched strip of the roof, and upon review, some of the patched strip was sealed and some areas not sealed. Where not sealed, there were gaps between the strip and the roof. This leads me to conclude the patched strip did not appear to be water-tight.

I also find that the inspection of the roofing contractor was not probative of whether or not the tenant's ceiling leaked or not. I also find the landlord's photo of a ceiling in an unknown rental unit not showing water stains is not sufficiently probative of whether there was a leak in this particular rental unit.

The landlord confirmed that they advised tenants to move out of the building. I also find the landlord's own evidence shows they believe they are not under the normal landlord obligations to make repairs due to the impending, or potential, demolition of the residential property or because the monthly rent was low.

I find the landlord is obligated under the Act to make repairs to the roof and the heating system. The tenant is afforded the rights of **every** tenant under the Act, and the landlord is not permitted to treat this tenant differently than a tenant who is in newer rental accommodations paying more rent.

I find the landlord submitted insufficient evidence from a professional that the HVAC could not be repaired, due to the age of the building.

For these reasons, I make the following orders pursuant to sections 62(3) of the Act:

1. **I ORDER** the landlord to hire, at their expense, a licensed roofer, other than the company who repaired the roof in November 2021, to attend the residential property **no later than July 15, 2022 by 5:00 p.m. Pacific Time** to inspect the roof and ensure that any repairs to the roof recommended by the licensed roofer are **completed no later than August 15, 2022 at 5:00 p.m. Pacific Time**. The landlord is put on notice that this order is intended to ensure that there be no further leaking in the rental unit or common areas.
2. **I ORDER** the landlord to repair and paint the ceiling in the rental unit that is currently taped over with plastic, with significant water staining, **within two (2) weeks** after any repairs are made.

- 3. I ORDER** the landlord to hire, at their expense, an HVAC specialist to attend the residential property **no later than July 15, 2022 by 5:00 p.m. Pacific Time** to inspect the HVAC system and to make a determination whether the HVAC system is beyond repair. If the HVAC specialist determines that the HVAC system is not beyond repair, I order the landlord to ensure those repairs are **completed no later than August 30, 2022 at 5:00 p.m. Pacific Time.**

In the event the HVAC system is beyond repair, as proven by the HVAC specialist, I find the landlord has provided the tenant with a satisfactory alternative heating source when they provided a portable heater. I, however, inform the landlord they cannot control when the tenant uses the portable heater.

If the landlord fails to comply with my orders above, the tenant may apply for monetary compensation including, but not limited to, an application for a reduction in rent until such time that the orders have been completed. The tenant may also contact the Compliance and Enforcement Unit at the RTB to report the non-compliance of my orders, should the landlord fail to comply with any of my orders within the specified timelines.

I have not addressed the matter of hot water, as the same was not brought forth at the hearing. The tenant is granted leave to re-apply for that issue.

I grant the tenant recovery of their filing fee of \$100, pursuant to section 72(1) of the Act. I direct the tenant to deduct \$100 from a future monthly rent payment, in satisfaction of the award. The tenant should notify the landlord when this deduction is being made.

Conclusion

The tenant's application for an order for repairs to the rental unit has been granted, the landlord is ordered to make the repairs as noted above, and the tenant is granted recovery of their filing fee.

The tenant's monetary claim is dismissed, with 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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 06, 2022

Residential Tenancy Branch