



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65.

AK represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application') and amendment. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's application and amendment. As all parties confirmed receipt of each other's

evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant confirmed that the landlord had performed the repairs referenced in their application, but noted that they were done just two weeks prior to the hearing. As the repairs have been addressed, this portion of the tenant's application was withdrawn.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began approximately twenty-two years ago. The tenant currently plays \$999.00 in monthly rent, which is payable on the first of the month. The landlord still holds a security deposit of \$310.00 for this tenancy.

This tenant requested the following monetary compensation, as well as an order for the landlord to comply with the *Act*.

Item	Amount
5% rent reduction for delay in repairing blinds and bathroom	\$246.25
2% rent reduction for delay in repairing kitchen counter	316.04
Compensation for damaged table due to soot	19.03
Compensation—cleaning of soot	26.25
Total Monetary Order Requested	\$ 607.57

The tenant originally filed this application on May 19, 2022 after making multiple repair requests to the landlord. The tenant submitted detailed evidence documenting their history with the landlord during this long-term tenancy, which the tenant feels involved harassment and meritless threats of eviction. The tenant submitted a copy of a Notice to End Tenancy in 2020 received during the period when the landlord was aware such

Notices were not to be issued for unpaid rent. The tenant testified that the landlord had a long history of intimidation tactics in order to threaten tenants and avoid repairs.

The tenant testified that the landlord had a history of delaying repairs, and would take years to perform repairs after the tenant files for dispute resolution. The tenant noted that delay tactics were the standard, and as supported by this application, the landlord would ignore the tenant's repeated requests for repairs. The tenant submitted photos and videos of the rental unit, which the tenant feels supports their testimony of how the landlord would avoid repairing obvious damage, such as the broken blinds, and the mould and mildew on the countertop and in the bathroom. The tenant submits that the rent reductions requested reflects the loss of enjoyment of the rental unit due to the landlord's intentional delays.

The tenant called a witness, MB, who had lived in the building for 8 years. MB testified that they also had issues with the blinds, and landlord's refusal to perform repairs.

The tenant is also seeking compensation for the damage caused by the soot that entered the tenant's rental unit while the roof was repaired. The tenant testified that they had to purchase a new table which cost them \$19.03, and had spent a significant amount of time cleaning the soot which entered the rental unit. The tenant is seeking compensation for their time, which they calculated to be worth \$26.25.

The landlord's agent testified that they have been the building manager in the building, whose duties including maintenance. The agent testified that they had misunderstood the tenant's requests, and though the tenant was requesting replacement countertops, which the landlord said was not possible. The agent testified that they had performed the repairs requested.

The landlord testified that the blinds were restrung many times as they do wear out. The landlord testified that their practice was to repair if possible, unless the damage was caused by the tenant.

The landlord disputes the tenant's request for compensation related to the roofing as the tenant left their window open.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claims on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I must first note that the tenant's application references allegations of misconduct, and specifically what the tenant feels to be a deliberate attempt by the landlord and their agents to intimidate and threaten the tenant, and avoid their duties and obligations of the *Act*. The Compliance and Enforcement Unit (CEU) ensures compliance of the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations,

- (b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c) given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedy through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

In review of the evidence and testimony before me, I find that the landlord did not provide sufficient evidence to support that the tenant was given proper notice about the roofing that took place. As a consequence, the tenant was not aware that they would need to take measures to prevent the soot from entering their rental unit, including closing any open windows. The tenant provided evidence to show the effect of this soot, which entered their rental unit and had to be removed and cleaned off the tenant's belongings. I find that the tenant's monetary claims for losses to be reasonable and reflect the losses associated with the landlord's failure to properly inform the tenant of the roofing. Accordingly, I allow the tenant's claims for replacement of the damaged table, and for the cleaning.

I will now consider the rent reductions requested by the tenant for the landlord's failure to maintain and repair the rental unit as required by the *Act*.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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 27(1) and 28 of the *Act* outlines the landlord's obligations in relation to restricting services or facilities, as well as the tenant's right to quiet enjoyment.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have considered the testimony of both parties, and I am satisfied that the tenant had to endure significant delays while awaiting requested repairs. As noted above, I do not have the authority to impose administrative penalties under section 87.3 of the *Act*. However, I accept that the tenant did suffer a loss of enjoyment due to the landlord's failure to repair the blinds in a timely manner. I find that the tenant provided sufficient evidence to support that the blinds were not functioning properly, and as a result, the tenant lacked the privacy the blinds would normally afford them when closed properly.

I have also considered the other repair requests for the landlord to maintain and repair the countertop and caulking in the bathroom. Similar to the blinds, I find that the tenant had established that there was a significant delay in performing the maintenance and repairs of these areas, and the tenant's multiple requests would be ignored until the tenant filed an application for repair or compensation. Although I accept the fact that the building is old, the landlord must still take the necessary steps to maintain the building and rental unit in a state of repair as required by section 32 of the *Act*. Similar to the issue with the blinds, I do not have the authority to impose administrative penalties under section 87.3 of the *Act*, but I can consider the reduction in the value of the tenancy agreement associated with the tenant's claims. I accept the tenant's testimony that they suffered significant stress and loss of enjoyment while awaiting the landlord's response to their request for repairs, which the landlord eventually performed. I find that the tenant established that these repairs were necessary, and the delay affected their enjoyment of the rental unit. I am not satisfied that the landlord had provided a reasonable explanation for the delay in performing these repairs, which were not performed when reported or needed, but rather at the discretion of the landlord. I find the delays caused the tenant much anxiety as they took considerable care and attention to prevent further damage while they attempted to convince the landlord of the required repairs. I do not find that the tenant is responsible for this damage.

I find the tenant's requests for the rent reductions to be reasonable, and reflects the reduction in the value of the tenancy agreement suffered by the tenant due to the landlord's failure to repair and maintain the rental unit in a timely manner. I allow the tenant's requests for rent reductions in the amounts applied for.

In addition to the monetary orders, I also order that the landlord comply with section 32 of the *Act*, and perform repairs in a timely manner.

Conclusion

The tenant's withdrew their application for repairs.

I allow the tenant the monetary awards noted in the table below. In order to implement the monetary awards granted in this application, I order the tenant to reduce a future monthly rent payment until the full amount is paid. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$607.57 and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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Compensation—cleaning of soot	26.25
Total Monetary Order	\$607.57

I order that the landlord maintain the rental unit, and undertake and complete repairs as required by section 32 of the *Act*.

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 28, 2022

Residential Tenancy Branch