



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC-MT, MNDCT, RR, RP, AS, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- For more time to dispute a One Month Notice to end tenancy pursuant to section 66 of the Act
- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- For an order requiring the landlord to make repairs to the property pursuant to section 32 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- Allowing the tenant to assign or sublet the rental property pursuant to section 65 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord did not attend the hearing while the tenant JN attended. The tenant was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing proceeded by way of conference call. The tenant confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The tenant was affirmed.

The tenant advised that he served the landlord with the dispute notice and his evidentiary package by registered mail mailed October 6, 2022, to the landlord’s

address. The tenant provided the tracking information from Canada Post in support. There is no written tenancy agreement however the tenant advised that the landlord's address is the upper unit above the tenant in the rental unit. The registered mail package was returned to the tenant on October 31, 2022. Pursuant to sections 88, 89 and 90 of the Act the landlord is deemed to have been served with the dispute notice and supporting materials on October 11, 2022.

Preliminary Issues

At the outset of the hearing, the tenant advised that the dispute regarding the One Month Notice was resolved at a previous hearing. Therefore, the issue for more time to dispute the One Month Notice is dismissed.

Rule of Procedure 2.3 states that "Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply." This is also necessary to ensure an efficient dispute resolution process in which hearings are limited to one hour. The request for an order allowing the tenant to assign or sublet the rental property is dismissed with leave to reapply as it is unrelated.

Issue(s) to be Decided

1. Is the tenant entitled to a reduction in rent?
2. Is the tenant entitled to a monetary award as claimed?
3. Should the landlord be ordered to make repairs to the rental unit?
4. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

There is no written tenancy agreement. The tenant produced in evidence a tenancy letter signed by the landlord and tenant. The tenancy commenced April 15, 2020. Rent is \$1,850.00 per month and no security deposit or pet deposit were paid. The tenant still occupies the residence.

The tenant referred to a previous decision and orders made by an arbitrator on August 21, 2021 in respect of this landlord and tenant and the same rental property. The arbitrator ordered the following:

The landlords are ordered to perform the following repairs to the rental unit by September 15, 2021:

- 1) Complete repairs to the rental unit bathroom including, replacing broken tiles, regrouting, and fixing any leaks.
- 2) Repair all floor coverings for the rental unit
- 3) Replace or repair oven in the rental unit

The tenants are issued a one-time retroactive reduction of rent in the amount of \$500.00. I order that the tenants may reduce the amount of their next monthly rent payment to the landlord by this amount. I order that the monthly rent for this tenancy beginning with September 2021 is reduced by \$150.00. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the Act in the month following the completion of these repairs.

The tenant advised that the repairs to the oven were completed by the landlord on September 6, 2021. After that repair the tenant stated that he was told by the landlord to pay full rent from October 2021 or face eviction. The tenant paid reduced rent only for the month of September 2021 and paid full rent thereafter because he was concerned about being evicted. He is currently paying full rent and none of the other repairs ordered to be done have been completed.

In September 2021 the tenant started to experience difficulties with the temperature of the water in the shower and in December 2021 the shower water handle stopped working completely. The tenant was unable to regulate the water temperature and the water was either very hot or very cold. He advised the landlord about the issue and the landlord has failed to repair the shower. The tenant produced photos in evidence showing the temperature of the water at its cold temperature and at its hot temperature.

The tenant also stated that since the initial order by the arbitrator in August 2021, he has been hearing a loud mechanical noise in his bedroom, often at night. It occurs approximately seven days of every month and it is disturbing his sleep. The noise is coming from the landlord's residence which is directly above the tenant's residence. He has addressed the issue of the noise with the landlord and the noise still continues on an intermittent basis. He does not know what is causing the noise. He produced in evidence text messages sent to the landlord in August and December 2021 asking him

to rectify the noise and he also purchased pads for the landlord to use to stop the noise which he referred to in the texts. He also produced in evidence several videos with audio of the noise. These videos were taken over the course of several months, with the last video taken May 19, 2022. It is unclear from the videos what time of day they were taken.

The tenant is asking for the repairs ordered by the previous arbitrator to be completed. He is also seeking a further order for repair of the shower water handle and a further rent reduction until repaired. The tenant is also seeking monetary compensation for:

- the \$150.00 per month rent reduction that was ordered by the arbitrator but was paid by him out of a concern of being evicted
- loss of quiet enjoyment of the rental property due to the mechanical noise overhead in the bedroom

The total amount of compensation requested by the tenant is \$5,550.00.

Analysis

Section 32 of the Act provides that a landlord must 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 that makes it suitable for occupation. The previous arbitrator ordered a rent reduction until the repairs were completed, and that rent would return to the amount agreed upon for the tenancy in the month following completion of the repairs. The arbitrator clearly intended that the rent reduction remain in place until all repairs were completed. I am satisfied based on the evidence of the tenant that the only repair that has been completed to date is the oven repair. All other repairs before the previous arbitrator and contemplated in that order remain outstanding. Therefore, both the previous order for repairs, and the order for a rent reduction remain in place. The tenant is entitled to continue to reduce his rent in the amount of \$150.00 per month until the repairs are complete in their entirety based upon that order.

In addition, a new request for repair has been made by the tenant for the shower water handle. The undisputed evidence is that the handle stopped working in December 2021 and that the landlord has failed to repair the handle despite the tenant's requests to the landlord to do so. I therefore find that the tenant is entitled to an order requiring the landlord to repair the shower handle pursuant to section 32 of the Act and given the

length of time that the shower has required these repairs, I order that the repairs be completed by November 30, 2022.

Section 65 (1)(f) of the Act allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. The tenant currently has an order in place allowing him to reduce rent by \$150.00 per month until the repairs addressed in that hearing are complete. There is a further repair that needs to be completed to the shower water handle. I find that the landlord's failure to deal with the issues in the rental unit in a timely manner has had a further negative effect on the value of this tenancy over and above the rent reduction already in place.

The tenant has given evidence that he continues to reside in the residence despite the issues with the shower. I accept his evidence that the lack of ability to control the temperature in the shower has caused discomfort and required the tenant to seek out solutions to taking a shower that are less than ideal, including alternating between hot and cold water and attempting to find ways to mix the two extreme water temperatures together. I find that a further \$25 per month rent reduction is appropriate, until such time as the repairs to the shower water handle ordered above are completed, and the landlord and tenant have agreed in writing that the repairs are completed in a satisfactory manner.

Section 67 of the Act establishes that if damage or loss results from a breach of the Act, regulations or a tenancy agreement, an arbitrator may determine the amount of that damage or loss and order the landlord to pay compensation to the tenant. As noted in RTB Policy Guideline #16 in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the tenant did not reduce his rent by \$150.00 from October 2021 forward until now, he is seeking compensation of the amount that he was entitled to deduct pursuant to the order made under section 65 of the Act. The tenant provided a monetary order worksheet showing each month the amount of rent he paid from October 2021 onward. I find based on the undisputed evidence of the tenant that he has paid full rent in the amount of \$1,850.00 for the past 13 months. The total amount of rent overpayment is \$1,950.00. The tenant is therefore entitled to an order for monetary compensation for that amount pursuant to section 67 of the Act.

The tenant is also requesting compensation for loss of quiet enjoyment of the rental property. Section 28 of the Act states in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

The undisputed evidence of the tenant, supported by several videos containing audio, establish that the tenant's right to quiet enjoyment has been unreasonably disturbed. The landlord has not made adequate efforts to rectify the situation in response to requests by the tenant to do so. I accept the tenant's undisputed evidence that this noise has been occurring in the evenings on approximately 7 days every month since August 2021. The tenant is entitled to a monetary order of \$300.00 compensating him on a one-time basis for this disturbance pursuant to section 67 of the Act. I further note that this monetary award is only intended to compensate the tenant for loss of quiet enjoyment up until the date of the order. If the unreasonable disturbance continues after that time, the tenant may reapply for further resolution and relief.

As the tenant is successful in his application, he is also entitled to the recovery of his filing fee of \$100.00 pursuant to section 72 of the Act.

Conclusion

The landlord is ordered to perform the following repairs to the rental unit by November 30, 2022:

1. Repair the shower water handle to control the water temperature in the shower

I order that the monthly rent for this tenancy beginning with December 1, 2022, is reduced by \$25.00 in addition to the previous \$150.00 per month rent reduction order. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the Act in the month following the completion of these repairs and an agreement in writing signed by both parties that the repairs have been completed.

The tenant is entitled to compensation for overpayment of rent in the amount of \$1,950.00. I order that pursuant the tenant may reduce the amount of his rent payments until this compensation has been satisfied.

The tenant is granted a monetary order for \$400.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: November 7, 2022

Residential Tenancy Branch