



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REALS ESTATE SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, RR, RP, FFT

Introduction

A hearing was convened on July 19, 2022 in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy for Landlord's Use, for an Order requiring the Landlord to make repairs, for a rent reduction, and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution. At the hearing on July 19, 2022 the Tenants withdrew the application for an Order requiring repairs to the rental unit, as the Tenants will be vacating the unit on July 31, 2022.

There was insufficient time to conclude the hearing on July 19, 2022 so the hearing was adjourned. The hearing was reconvened on December 09, 2022 and was concluded on that date.

The male Tenant stated that on April 10, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch prior to April 10, 2022 was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On May 12, 2022 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, in May of 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On June 08, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to

the Tenants, via regular mail, in June of 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On July 05, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via regular mail, on July 05, 2022. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On July 12, 2022 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via regular mail, in July of 2022. The Tenants acknowledged receiving this evidence. This evidence is a copy of a previous communication between the parties and the Tenants acknowledged that they did not need additional time to consider the evidence. As such, it was accepted as evidence for these proceedings.

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.

Preliminary Matter

In the Application for Dispute Resolution the Tenants have applied for a rent reduction of \$1,691.90. In the details of the claim the Tenants declare they are seeking a rent reduction of 30%. At the hearing the female Tenant declared that their claim was intended to be a rent reduction of 30% per month for the previous two years.

The Agent for the Landlord submits that the Tenants claim should be limited to their declared claim of \$1,691.90.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that a claim is limited to "what is stated in the application".

Regardless of the amount the Tenants' claimed or intended to claim, I find this issue is irrelevant, as I have not awarded compensation that exceeds the declared amount of \$1,691.90.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?
Are the Tenants entitled to a rent reduction in compensation for deficiencies with the rental unit?

Background and Evidence presented on July 19, 2022

The Agent for the Landlord and the Tenants agree that:

- this has been a long term tenancy;
- at the time of the hearing the monthly rent was \$2,417.00;
- rent is due by the first day of each month;
- the Landlord served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use, dated March 18, 2022;
- the Two Month Notice to End Tenancy for Landlord's Use declared that the rental unit must be vacated by May 31, 2022; and
- the Tenants filed this Application for Dispute Resolution to dispute this Two Month Notice to End Tenancy for Landlord's Use and, as such, they did not vacate the rental unit on the May 31, 2022.

The Agent for the Landlord and the Tenants mutually agreed to settle the application to cancel the Two Month Notice to End Tenancy for Landlord's Use under the following terms:

- the tenancy will end, by mutual agreement, on July 31, 2022; and
- the Landlord will receive an Order of Possession that is effective on July 31, 2022.

The Tenants have applied for a rent reduction, in part, because there has been a leak under the kitchen sink for an extended period of time. In the Application for Dispute Resolution the Tenants declared that the garburator was leaking but at the hearing the male Tenant stated that it was subsequently determined that the kitchen faucet was leaking.

The Tenants submit that the leak under the sink was reported to the Landlord on several occasions, with the first report being made on August 20, 2019. The Tenants submitted email chains from August, September, and October of 2019 in which the Tenants and the agent that was representing the Landlord at that time discuss the leak.

The Agent for the Landlord stated that the agent representing him in 2019 did not inform him of a problem with the leaking sink.

The male Tenant testified that the Agent for the Landlord was advised of the leaking sink in October of 2021, when he visited the rental unit.

The Agent for the Landlord stated that the Tenants did not mention a leaking sink when he visited the unit in October of 2021. He stated that he was provided with a list of items that needed repair in October of 2021, which did not include the need to replace a garburator.

The Agent for the Landlord stated that when he became aware of the leaking sink, he hired a contractor to repair the sink. He stated that he replaced that contractor and that the second contractor had difficulty communicating with the Tenants regarding scheduling repairs.

The Agent for the Landlord and the Tenants agree that the leaking sink was repaired in May of 2022 but the cabinet under the sink has not been repaired.

The female Tenant stated that the mould that has accumulated under the sink and in the ceiling below the kitchen sink is “disgusting”.

The male Tenant stated that the mould accumulating in the cabinet is “unsettling”. He stated that they had to clean the water that accumulated below the sink approximately twice per week, although they did not need to use a bucket to collect water that was leaking.

The Agent for the Landlord stated that he is not aware of mould in the ceiling below the kitchen sink. He stated that the leak under the sink had “zero impact” on the Tenants but he agreed the cabinet below the sink was “not pretty to look at”.

Background and Evidence presented on December 08, 2022

The Tenants' claim for a rent reduction is based, in part, on the Tenants' submission that the carpets were not replaced.

The female Tenant stated that in May of 2012 an agent for the Landlord told her that the carpets in the rental unit would be replaced. She stated that on April 18, 2016 an agent for the Landlord sent an email in which the Tenants were told they were still "looking into" replacing the carpet.

The Agent for the Landlord stated that he is not aware of any promise to replace the carpets prior to August of 2021 and he has not seen "proof" of such a promise.

The Agent for the Landlord and the Tenants agree that in August or September of 2021 the Agent for the Landlord told the Tenants the carpets would be replaced, although they never were. The parties agree that the Landlord informed the Tenants that the carpets would not be replaced, via email, on February 03, 2022.

The Agent for the Landlord stated that after promising the carpets would be replaced, the Landlord decided that the property would be sold. He stated that the Landlord felt the inconvenience of replacing the carpet would be unfair to the Tenants, given that the unit was to be sold.

The Tenants submit that the carpet was last replaced in 1993, which the Agent for the Landlord does not dispute.

The male Tenant stated that the carpets were old and stained. The Agent for the Landlord describes them as "terribly stained". The female Tenant stated that they were not "terribly stained" but there was definitely "wear and tear" on high traffic areas.

Analysis

As outlined in my interim decision of July 19, 2022, the Landlord was granted an Order of Possession on the basis of the settlement agreement reached on July 19, 2022. As the parties mutually agreed to end the tenancy, I find there is no need to consider the application to cancel the Two Month Notice to End Tenancy for Landlord's Use.

Section 32(1) of the *Residential Tenancy Act (Act)* requires a landlord to 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. I find it reasonable to conclude that this includes an obligation to repair a sink when it is leaking.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

In many respects the covenant of quiet enjoyment is similar to the landlord's obligation to keep the premises in good repair. A landlord's failure to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because it could be seen to negatively impact the tenant's comfort and ability to enjoy the rental unit.

On the basis of the emails submitted in evidence, I find that on August 20, 2019 the Tenants first reported a problem with the kitchen sink to the agent representing the Landlord at that time. It is clear from the email chains submitted that the Tenants reported the issue on more than one occasion in 2019 and that the agent representing the Landlord at that time was aware of the issue.

I find that the issue with the leaking sink was properly reported to the Landlord when it was reported to the agent representing the Landlord in August of 2019. As such, the Tenants had a reasonable expectation that it would be repaired.

While I accept the Agent for the Landlord's testimony that he was not personally aware of the issue with the kitchen sink in 2019, that is a matter between the Landlord and the agent representing the Landlord in 2019.

On the basis of the undisputed evidence, I find that the leak in the sink was not repaired until May of 2022 and that damage to the rental unit as a result of the long-term leak has not been repaired.

I find that the leaking sink and the cosmetic damage to the unit as a result of the leak breached the Tenants right to quiet enjoyment of the rental unit. In reaching this conclusion I was influenced by the male Tenant's testimony that they had to clean below the sink approximately twice per week. I was also influenced by the photographs submitted in evidence, which clearly show the base of the cabinet is in a state of disrepair and there are stains on the ceiling below the kitchen sink. Although no evidence was presented that show there is mould in the rental unit, I find that the damage is unsightly and would have impacted the enjoyment of the rental unit.

Awarding compensation for loss of quiet enjoyment is highly subjective and, as such, is always difficult. After considering the impact of the leaking sink and the duration of the problem, I find that the Tenants are entitled to compensation of \$1,200.00.

While I accept that the Agent for the Landlord took steps to repair the leaking sink after he personally became aware of the need for repairs, the fact remains that the Tenants lived with a leaking sink and a rental unit in a state of disrepair for an extended period of time.

I find that the Tenants have submitted insufficient evidence to establish that the Landlord breached section 32(1) of the *Act* by not replacing the carpet during the tenancy.

While the parties clearly agree that the carpets were old and stained, I find that there is insufficient evidence to establish that the carpets did not comply with health, safety, and housing standards or that the absence of new carpets rendered the unit unsuitable for occupation by a tenant. The legislation merely requires a landlord to maintain carpets 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.

In concluding that there is insufficient evidence to conclude that the carpets rendered the unit unsuitable for occupation by a tenant, I was influenced by the female Tenant's testimony that the carpets were not "terribly stained", although there was "wear and tear" on high traffic areas.

In concluding that there is insufficient evidence to conclude that the carpets rendered the unit unsuitable for occupation by a tenant, I was further influenced by photographs submitted in evidence by the Tenants. In some of those photographs I could view some areas on the carpet. The condition of the carpet, as depicted in those photographs does not, in my view, establish that there was a clear need to replace the carpets.

As the Tenants have failed to establish that there was a clear need to replace the carpets, I cannot conclude that their right to the quiet enjoyment of the rental unit was breached as a result of the Landlord's failure to replace the carpet.

Residential Tenancy Branch Policy Guideline #40 suggests that carpets have a useful life of 10 years. On the basis of the undisputed evidence, I find that the carpets in the unit were approximately 19 years old. This is merely a guideline and cannot be relied upon for the purposes of section 32(1) of the *Act*. Carpets that have been damaged by water, for example, may need to be replaced far sooner than their expected life of 10 years. Conversely, carpets that have been well cared for can significantly exceed their projected life of 10 years. In these circumstances, I have relied on the evidence of the condition of these carpets, and not on the suggested useful life of carpets.

On the basis of the undisputed evidence, I find that in August or September of 2021 the Agent for the Landlord told the Tenants the carpet would be replaced, although it never was. I am not aware of anything in the *Act* that requires a landlord to comply with a promise to make repairs, providing those repairs are not required by section 32(1) of the *Act* or the absence of repairs constitutes a breach of the right to quiet enjoyment of the unit.

Section 67 of the *Act* authorizes me to award compensation to a tenant if they suffer a loss as a result of the landlord breaching the *Act* or tenancy agreement. As I am unable to conclude that failing to comply with a promise to replace the carpets is a breach of the *Act* and/or tenancy agreement, I am unable to award compensation for the Landlord failing to comply with the promise to replace the carpet.

I note that I would conclude that compensation is not warranted even if I accepted the Tenants' submission that in 2012, they were told the carpets would be replaced.

I find that the Tenants' Application for Dispute Resolution has merit and that they are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord was granted an Order of Possession, in my interim decision of July 19, 2022, which was granted on the basis of a mutual agreement to end the tenancy.

The Tenants have established a monetary claim of \$1,300.00, which includes \$1,200.00 for loss of quiet enjoyment and \$100.00 for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be 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: December 09, 2022

Residential Tenancy Branch