



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDCT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on June 30, 2022, the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in June of 2022 was sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On February 16, 2023, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenant's service address, via registered mail, on February 17, 2023.

The Agent for the Tenant stated that she moved from the service address provided for these proceedings so there was a delay in receiving the documents the Landlord mailed to that service address. She stated that the Tenant picked up this evidence package approximately one week ago, he forwarded some of that evidence to the Agent for the Tenant, and that the Agent for the Tenant has had sufficient time to consider that evidence. As such, the Landlord's evidence 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.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for a deficiency with the rental unit?

Background and Evidence:

The Agent for the Tenant stated that the ceiling light in his living room, kitchen, and hallway stopped working at some point in the tenancy, although she does not know when that occurred. She stated that the light in the bedroom and the bathroom worked throughout the tenancy.

The Agent for the Landlord and the Agent for the Tenant agree that:

- The tenancy began on October 11, 2019;
- On March 09, 2022, the Tenant told the Landlord that the aforementioned lights were not working;
- The Tenant reported the issue again on March 14, 2022 and March 27, 2022;
- The lights were LED lights, which need to be replaced when they stop working, as opposed to changing a light bulb; and
- The lights were not repaired until May 27, 2022.

The Agent for the Landlord stated that there was a delay in replacing the lights because the lights were not in stock and the Landlord wanted to install the same lights in the unit so all lights in the unit matched. She stated they were installed by an electrician as soon as they were available.

The Agent for the Landlord stated that the Tenant told her assistant that he was using a floor lamp to provide light in the unit and that there was no urgent need to replace the lights. The Landlord submitted a letter from this assistant that corroborates this testimony.

The Agent for the Tenant stated that she does not know if the Tenant told an agent for the Landlord that he had a floor lamp, however when she arrived at the unit on May 27,

2022, there was no floor lamp. She stated on May 27, 2022, the only light in the living room, kitchen, and hallway was provided by the light on the stove.

The Agent for the Tenant stated that there were no windows in the living room/kitchen and that the living conditions were unbearable as a result of the absence of light, which impacted the Tenant's mental health.

Analysis:

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 requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the resulting deficiency with the unit makes it uncomfortable to live in the unit.

On the basis of the undisputed evidence, I find that on March 09, 2022, the Landlord was informed that the ceiling lights in the living room, kitchen, and hallway had stopped working and that those lights were not repaired until May 27, 2022.

On the basis of the written submission of an agent for the Landlord, I find that when the

issue with the lights were reported to the Landlord, the agent for the Landlord was informed that the Tenant was using a floor lamp to provide light in the living room, kitchen, and hallway. In reaching this conclusion I was heavily influenced by the absence of evidence from the Tenant, such as testimony or a written statement, that refutes the written statement of the agent for the Landlord. I note that the emails the Tenant sent to the Landlord regarding the lights do not mention he is without a light source.

I find that the testimony of the Agent for the Tenant, who declared there was no lamp in the unit when she arrived on May 27, 2022, is of little evidentiary value, as it does not refute the Landlord's submission that the Tenant told the agent for the Landlord he was using a floor lamp. I find that there are many possible explanations for why there was no lamp in the unit on May 27, 2022, including that the Tenant removed the lamp sometime between February 09, 2022 and May 27, 2022, for reasons unknown.

I find the delay in replacing the lights was unreasonable. While I accept the delay was related to the Landlord's inability to find the same type of lights and the Landlord's desire to install the same type of lights, I find it would have been reasonable for the Landlord to install different lights even if they did so on a temporary basis.

I find that the delay in replacing the lights was a breach of the Tenant's right to quiet enjoyment of the rental unit and that he is entitled to compensation for that breach. Determining the amount of compensation due to a tenant for a breach of the right to quiet enjoyment is highly subjective and is guided by the seriousness of the situation or the degree to which tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises and the length of time over which the situation has existed.

In these circumstances, I find that the Tenant is entitled to compensation of \$450.00 for being without lights for approximately 3 months. In determining that greater compensation is not warranted, I was influenced by the evidence that the Tenant informed the Landlord that he had a floor lamp and, as such, it was reasonable for the Landlord to believe that the Tenant was not without light in the living room, hallway, and kitchen.

In the event the Tenant misinformed the Landlord when he said he had a floor lamp, I find it was incumbent upon him to clarify that he was without any light source in the living room, kitchen, and hall. Alternatively, the Tenant could have mitigated the impact

the absence of light had on his tenancy by purchasing an inexpensive light and seeking reimbursement for that expense.

Regardless of the presence of a floor lamp, I find it is far less convenient to use lamps which typically provide less light than a ceiling lamp and are less convenient to turn off and on. The award of \$450.00 is compensation for this inconvenience.

In determining the amount of compensation due to the Tenant, I have placed limited weight on the submission that the absence of light impacted the Tenant's mental health, as there is no medical evidence before me that establishes the use of a floor lamp would have any significant impact on mental health.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$550.00, which includes \$450.00 in compensation for being without lights and \$100.00 as compensation 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: March 02, 2023

Residential Tenancy Branch