



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING and BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, RP, PSF, OLC

Introduction

This hearing was reconvened as a trial de Novo, by way of conference call concerning an application made by the tenant seeking the following relief:

- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- an order that the landlord comply with the *Act* or the tenancy agreement.

The tenant and an agent for the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions. No issues with respect to exchange of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

At the commencement of the hearing, I alerted the parties to a previous Interim Decision after a hearing had commenced on April 3, 2023, which states that time ran out prior to the tenant giving any testimony regarding the monetary claim. The hearing was adjourned to May 23, 2023, however the Arbitrator who heard testimony on April 3, 2023 is not able to conclude the hearing. Therefore, the hearing reconvened without considering any testimony previously heard by another Arbitrator.

Further, the tenant indicated on May 23, 2023 that the tenant does not seek an order for repairs, or an order that the landlord provide services or facilities, or that the landlord comply with the *Act* or the tenancy agreement. I dismiss those applications, with the consent of the tenant.

The tenant's application names the landlord twice, and pursuant to my authority under Section 64, I amended the Style of Cause, as shown on the frontal page of this Decision, to name the landlord once.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for pest infestation, loss of furniture and food, and compensation for devaluation of the tenancy?

Background and Evidence

The tenant testified that this month-to-month tenancy began on December 12, 2013 and the tenant still resides in the rental unit. Rent is subsidized, and the tenant's share is 30% of income, presently set at \$328.00 per month due on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$166.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the first floor of a 4-floor apartment building. A copy of the tenancy agreement has been provided by the landlord for this hearing.

The tenant further testified that when the tenant spoke to an adjudicator, the tenant was told that the tenant was entitled to half a months rent from the date of filing until the construction work was completed. The work consisted of painting, pest removal from cupboards, new cupboards, drywall, electrical work and the rails on heaters. The construction work was completed in October or November, 2022 and the tenant filed the application on October 26, 2022.

The tenant's furniture was destroyed with the pesticide. All furniture and the tenant's television all turned dark brown. The pesticide entered the side and inside the television and shadowed the entire outside of the screen. All furniture had to be removed, including cupboards. The pest control people told the tenant that all food in the pantry had to be removed to prevent eggs from pests.

On October 27, 2022 the building manager arrived who looked at the rental suite identifying himself as a painter. On October 26, 2022 the landlord gave a notice to enter for the paint contractor to attend on October 28.

On November 4, 2022 the landlord gave a notice for a cleaning company to enter to clean the hood range on the outside only, not the inside.

On November 10, the same man came back saying he was a pest control officer. The man was no longer a paint contractor, but now a pesticide officer, and the landlord refused to provide the man's name. The man said to throw out all food and said he'd be back, but never did. On November 23, 2022 a licensed pesticide company arrived for silverfish and completed a pest treatment and then had to do another treatment. The landlord gave the tenant \$100.00 to re-pay the tenant for "Indian Meal Moth" treatment.

Also, the intercom doesn't work, and an ant infestation continues in the bathroom. The tenant sent photographs to the landlord to show that. Painting still needs to be done in the kitchen, and 2 elements need to be rewired. The landlord attended on May 10, 2023 and knows what to do.

The tenant's furniture was about 10 years old, and the television, a 72 inch flat screen, was purchased last December for \$478.00 on sale. The tenant saved his clothing, some minor food and shoes, but the furniture and television had to be disposed of, which was done by the landlord. The tenant's living room is now empty. The tenant claims half a months rent from October, 2022 to present. Some painting was done, but plaster remains and the painter never came back, leaving his tools in the rental unit.

The tenant claims \$1,900.00 for loss of furniture, television and stereo; \$1,100.00 for food; and reimbursement of half a months rent for the months of October, 2022 through January, 2023; for a total of \$3,656.00.

The tenant's evidence also indicates that repairs were done on January 20, 2023. The tenant has also provided a copy of a letter from the landlord dated March 1, 2023 which indicates that the tenant was given a cheque in the amount of \$100.00 for food replacement in December, 2022 and frozen meals for 2 weeks; cleaning the unit after pest control treatments in January, 2023; and the landlord provided a couch and TV which were selected by the tenant in February, 2023. It also states that painting and drywall repairs were completed by February, 2023.

The landlord's agent testified on October 9, 2022 there was no heat, but that issue was resolved in 1 day. On December 31, 2022 there was no hot water, which was also resolved right away.

On October 26, 2022 the bathtub in the unit above overflowed and damaged the tenant's rental unit, including behind the cupboards. On October 28 a vendor who provides services for the landlord for venting systems found that Indian Moth was only in unit 109. The system was cleaned and inspected on November 10, 2022.

There was nothing to suggest that the tenant had to remove furniture, only to move it away from walls. There is no indication from the pest control personnel that the tenant had to do that. They have a government approved pesticide, which is not offensive and does not cause discoloration, and if that happened, the tenant should report it right away.

On December 12 the bathroom vanity was replaced, and the kitchen cupboards in January, 2023. Paint and drywall was repaired by February, 2023.

On May 12, 2023 the landlord initiated a meeting and found that minor repairs were still required but major repairs were completed. None of the minor repairs affect the tenancy. Glue is still required for the kitchen cabinets, and a baseboard cover needs to be attached properly. Paint touch-up has to happen on the wall above the stove, and on top of a door. The fridge and stove were replaced due to their age, and were close to where the flooding occurred.

The bugs were reported in October when the flooding occurred, not previously. The landlord's agent does not believe the contractors identified themselves as painters and pest control.

The landlord's agent further testified that the landlord does not collect a security deposit or pet damage deposit.

SUBMISSIONS OF THE TENANT:

The tenant notified the landlord with photographs showing damages from insects in the bathroom. There is still an infestation in the bathroom; ants are coming in under the floorboards. The kitchen ceiling needs to be repainted and sanded and 2 plug-ins under the cabinets are sparking. The baseboard was cut 1.5 inches too short.

SUBMISSIONS OF THE LANDLORD:

Minor repairs were required after the May 12 inspection. The landlord has not heard about ants, and will schedule pest control, but the request must be submitting in writing. The landlord disputes the tenant's testimony that he provided photographs of an ant infestation in the bathroom.

Analysis

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, there is no question that the tenancy was devalued, which I find was caused by flooding in a unit above on October 26, 2022, at no fault of the tenant.

I have reviewed all of the evidence of the parties, and note that the landlord has reimbursed the tenant \$100.00 for loss of food and 2 weeks of frozen meals. The tenant did not dispute that evidence. Therefore, I find that the landlord has already compensated the tenant for food. The tenant has not provided any evidence that any larger amount of compensation is warranted.

The evidence also shows that the landlord replaced a couch and television, and I find that the tenant has been reimbursed for those items. There is no other evidence to satisfy me that the tenant is entitled to any other compensation for furniture, or what that amount might be.

Having found that the tenancy has been devalued at no fault of the tenant, I agree that half of the rent should be compensated to the tenant from October 26, 2022 to sometime in January, 2023, and the painting was completed on January 18, 2023. However, the evidence also shows that the tenant was offered a respite suite while the pest control was being done, but the tenant refused, and I find that the tenant has not established mitigation or that any further compensation is warranted.

Considering the evidence before me, I find that the tenant has established a claim of \$31.74 for October, 2022 ($\$328.00 / 31 = \$10.58 \times 6 \text{ days} = \$63.48 / 2 = \$31.74$); \$164.00 for November, 2022; \$164.00 for December, 2022; and \$95.22 for January 1 to

18, 2023 ($\$328.00 / 31 = \$10.58 \times 18 \text{ days} = \$190.45 / 2 = \$95.22$); for a total of \$454.96.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed, with the consent of the tenant.

The tenant's application for an order that the landlord provide services or facilities required by the tenancy agreement or the law is hereby dismissed, with the consent of the tenant.

The tenant's application for an order that the landlord comply with the Act, regulation or tenancy agreement is hereby dismissed, with the consent of the tenant.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$454.96.

This order is final and binding and may be enforced.

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: May 31, 2023

Residential Tenancy Branch