



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, RR, RP, PSF, LAT, OLC, FFT**

Introduction

This hearing was set to deal with the tenant's application for several remedies, including:

- Repair orders
- Orders for compliance
- Orders for the landlord to provide services or facilities
- Authorization to change the locks
- Authorization to reduce rent payable
- Monetary compensation for damages or loss under the Act, regulations, or tenancy agreement

Both parties appeared and/or were represented at the hearing and the parties were affirmed.

Preliminary and Procedural Matters

The tenants filed this application on August 15, 2022 and served to the landlord with the proceeding package on September 2, 2022. The details of dispute provided on the application were vague and largely scant of particulars. For the most part, the details of dispute referenced an "Applicant Evidence Package" for details. However, the Applicant Evidence Package that included the details of dispute and the tenant's evidence was not served until February 23, 2023. On April 26, 2023 the tenant's submission was "updated" and additional evidence was served. On May 3, 2023 the landlord served a response to the tenants. On May 9 and 10, 2023 the tenants served more materials.

Considering this application included requests for orders for repairs, compliance, services or facilities and authorization to change the locks – which are scheduled more

quickly than other types of disputes, I asked the tenants the reason the details of dispute and their evidence was served so long after filing. The tenants explained they were overwhelmed by dealing other dispute resolution proceedings that dealt with notices to end tenancies.

It was brought to my attention that two requests for rescheduling had been submitted, extending the original hearing date of November 15, 2022 to March 10, 2023 and then to May 11, 2023.

Section 59(2) of the Act sets out requirements for filing an Application for Dispute Resolution, including:

- (2)An application for dispute resolution must
 - (b)include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

Rules 2.5 and 3.1 of the Rules of Procedure set out what must be included in submitting an Application for Dispute Resolution to the Residential Tenancy Branch and serving it to the respondent within three days of filing. The Rules require that an applicant provide, in part:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant must submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, when the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

It is clear from section 59(2)(b) and Rules 2.5 and 3.1 that the applicant is required to serve the respondent with full particulars of the matter that is the subject of the dispute

resolution hearing, including a detailed calculation where a monetary claim is being made, with the application. If there are changes after submitting and serving an application, the Rules provide a mechanism to amend the application.

The above information, in plain language, is also provided in the Guide to Dispute Resolution available on the Residential Tenancy Branch website. In the section Completing the Application for Dispute Resolution, it sets out the information that must be provided with the Application for Dispute Resolution, including the “full details of each claim and supporting evidence” and a link to a Monetary Order Worksheet where a monetary amount is being claimed. Below, I have provided an excerpt from the Guide to Dispute Resolution:

Completing the Application for Dispute Resolution

RTB Information Officers can answer questions about the application process, but do not provide advice. If advice is needed, parties should speak to a lawyer or advocate. To apply for dispute resolution through the RTB, be sure to follow the instructions on the form or on the webpage if applying online.

The following is a checklist of the necessary information to have before submitting an application:

- The complete legal name of each applicant and respondent.
- The complete address of each applicant and respondent, including postal codes.
- The complete address of the rental unit, manufactured home site, or property.
- Full details of each claim and any supporting evidence.
- The amount(s) of money being claimed (if applicable) listed on a [Monetary Order Worksheet RTB-37](#).
- A copy of the tenancy agreement (if a written agreement exists).
- A copy of any relevant notice to end tenancy if an Order of Possession or an Order to cancel the notice is being requested.
- A copy of the Notice of Rent Increase if it is being disputed.

Requesting that a hearing be rescheduled does not exempt an applicant from the filing and service requirements. A request to reschedule is intended to accommodate parties where they have a scheduling conflict or are unavailable for the scheduled hearing date

and time. Nor is a rescheduling intended to permit parties to file an application to reserve a hearing spot and then provide details later.

I find the Application for Dispute Resolution filed and served to the landlord fails to meet the requirements of section 59(2)(b) by a significant period of time for most the most part. Further, the amount claimed on the application is different that that included in their Applicant Evidence Package. On the Application for Dispute Resolution the tenants claim \$500.00 for damages or loss and a rent reduction of \$34,500.00; however, in the Applicant Evidence Package, the tenants indicate they are seeking a retroactive rent reduction of a “minimum” of \$48,000.00. A retroactive rent reduction, if successful, is given by way of a Monetary Order. My jurisdiction to make Monetary Orders is limited to the Small Claims limit of \$35,000.00 except in specific circumstances that do not apply here.

Upon review of the application, I was of the view that two of the issues had sufficient detail that could be pursued during the hearing and I informed the parties that I would hear those matters: the tenant’s request to change the locks and the tenant’s request for access to the sauna. I informed the parties that I would hear those matters. These two matters were addressed rather quickly during the hearing, and I permitted the tenants to raise the most urgent repair issue in the hearing time that remained.

For the reasons provided above, I dismiss the remainder of the tenant’s application with leave to reapply. Before re-filing I strongly suggest the tenants prepare their details of dispute, evidence, and calculations so that they may be submitted and served in accordance with section 59(2)(b) and the Rules of Procedure.

Issue(s) to be Decided

1. Is necessary and appropriate to authorize or order changes to the locks?
2. Is it necessary and appropriate to order the landlord to provide access to the sauna?
3. Is it necessary and appropriate to order the landlord to make other repairs?

Background and Evidence

Locks

It is undisputed that the front entry door lock has an electronic keypad. The tenants submitted the lock is not working. The tenants acknowledge the landlord had authorized them to replace the lock and they were provided money to do so but the tenants explained that the lock they purchased did not fit. The tenants believed they had returned the lock and the money to the landlord but if not, they will do so. The tenants request the landlord be responsible for finding the appropriate lock for the front door and replace it. The tenants also submitted that they have no keys for the side doors.

The landlord indicated they would provide the tenants with copies of keys for the side door(s) and replace the front door lock within two weeks of the hearing date. During the hearing, I ordered the landlord to replace the front door lock and provide keys to the tenants for the side door(s) within two weeks of the hearing.

Sauna

As for the tenant's request to have access to the sauna, the tenants stated during the hearing that they understand the landlord does not want the tenants to have access to it so they withdraw this request. The tenants indicated they will include their loss of its use in their request for a rent reduction.

Water damage

The tenants identified previous water leaks from the decks, creating water damage in the ceiling and walls, as the repair issue they consider most urgent to resolve. The tenants pointed out that the contractor that attended the property to respond to the leaking did not open the ceiling or wall cavities because asbestos testing had not been performed. The tenants want the landlord to ensure the ceiling and wall are opened up to ensure the ceiling and wall cavity are dry and free of mould but that proper asbestos testing and handling of the hazardous materials.

The landlord acknowledged there had been water leaks from the deck but that it had been repaired and the rental unit had also been dried by using large fans. The landlord

was aware of staining on the ceiling but was of the view that the appropriate repair was to just paint over the stain.

The tenants questioned whether the deck repair was sufficient but acknowledged they had not seen any indication of further leaks for several months. The tenants indicated that for the time being they are willing to accept that the deck has been repaired but will notify the landlord if they see any more signs of a leak.

The tenants also submitted that they had a restoration contractor attend the rental unit after the leaking and that contractor opined that asbestos testing would be required due to the age of the rental unit. The tenants had shared the findings of the restoration contractor with the landlord.

The landlord's evidence included an Interim Decision pointing to the parties ongoing dispute concerning a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice") and I have referenced the file number on the cover page of this decision.

During the hearing, I ordered the landlord to have a qualified contractor inspect the water damaged areas of the rental unit that were identified by the tenants and have the contractor prepare a written report, quotation or estimate describing the work involved to test the affected areas for hazardous materials such as asbestos and make the necessary repairs to rectify the water damage in the ceiling and wall cavities. I further ordered the landlord to provide the tenants with a copy of the contractor's report, quotation, or estimate. The landlord's deadline for doing so was set as May 31, 2023.

Analysis

The parties are in another dispute resolution proceeding concerning a disputed Two Month Notice and the fate of the tenancy has yet to be determined. As of the date of writing this decision, that proceeding is adjourned and is set to reconvene on June 6, 2023. Since the fate of the tenancy has not yet been decided, and the tenants remain in possession of the rental unit until at least such time it is, the landlord remains bound to repair and maintain the rental unit in accordance with the Act.

Section 32 sets out the landlord's obligations to repair and maintain, as follows:

- 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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[My emphasis underlined]

Locks

I heard undisputed evidence that the front door lock requires repair or replacement. The tenants also requested keys for the side door(s) and the landlord was agreeable to providing the tenants with such keys. **The landlord was ordered to repair or replace the front door lock and provide the tenants with keys for the side door(s) by May 25, 2023 orally during the hearing.**

Water damage

It is undisputed that there had been water leaking into the rental unit, causing water damage. I reject the landlord's position that the only repair needed to address the water damage is to paint over the water staining that is visible on the drywall. Ceiling cavities and wall cavities are typically constructed with insulation, wood, and vapour barrier. Ingress of water in these cavities often causes the area to stay wet for significant periods of time unless it is opened and dried. Areas that remain wet are likely to rot and become mouldy which is not safe or healthy. As such, where there has been a water leak, it is customary for drywall to be cut from the affected area to open up the cavity and allow it to dry and have the appropriate anti-bacterial and/or anti-fungal chemicals applied. I further accept the evidence before me that the drywall or drywall compound in the rental unit has a high likelihood of containing asbestos given the age of the rental unit. Therefore, during the hearing, **I ordered the landlord to do the following by May 31, 2023:**

- **have a qualified contractor inspect the water damaged areas of the rental unit that were identified by the tenants and have that contractor prepare a written report, quotation or estimate that describes the work involved to test the drywall and/or drywall compound for hazardous materials,**

including asbestos, and make the necessary repairs to rectify the water damage in the ceiling and wall cavities.

- **provide the tenants with a copy of the contractor's report, quotation, or estimate.**

It is expected that upon receiving the above-described report, quotation or estimate, the landlord will proceed to make the appropriate asbestos testing and repairs in a timely manner. It is further expected that the landlord will obtain the tenant's consent to enter or give the tenants a notice of entry in accordance with section 29 of the Act and upon giving consent or receiving a notice of entry, the tenants will not interfere with the landlord and her contractor's efforts to make the necessary repairs.

Should the landlord fail to comply with my orders, the tenant's remedy includes filing another Application for Dispute Resolution or seeking assistance from the Compliance and Enforcement Unit with the Residential Tenancy Branch.

Conclusion

I have issued repair orders to the landlord as set out above, in bold.

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