



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1121695 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

DRI, RP, RR, OLC, MNDCT, MNRTC

Introduction:

A hearing was convened on February 16, 2023 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, for a rent reduction, for an Order requiring the Landlord to make repairs, to recover the cost of emergency repairs, to dispute a rent increase, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement.

The hearing on February 16, 2023 was adjourned for reasons outlined in my interim decision of February 16, 2023. The hearing was reconvened on June 19, 2023 and was concluded on that date.

At the hearing on February 16, 2023 the Tenant confirmed that he wished to withdraw all issues in dispute with the exception of the claim for a monetary Order for money owed or compensation for damage or loss.

At the hearing on February 16, 2023 the parties agreed that the Application for Dispute Resolution could be amended to include an application for the return of the security deposit. I therefore find it reasonable to amend the Application for Dispute Resolution to include that claim.

In my interim decision, the Tenant was given authority to serve the Landlord with documents the Tenant submitted to the Residential Tenancy Branch on January 01, 2023; January 03, 2023, January 25-26, 2023, January 29, 2023, and February 03, 2023, via email.

At the hearing on June 19, 2023 the Tenant stated that on February 28, 2023 these documents were sent to the email address provided to him at the previous hearing, which he cited. The Agent for the Landlord with the initials "EH", hereinafter referred to as "EH" confirmed that the email address cited by the Tenant was correct.

"EH" stated that he did not receive documents sent to his email address on February 16, 2023 and there is no reason he would not have received documents sent to his email address.

The Tenant submitted documentary evidence that supports his testimony that he emailed evidence to the Landlord on February 28, 2023. Although this evidence is not conclusive, I find it corroborates the Tenant's testimony that it was sent to the email address provided by the Landlord. I therefore find that it was properly served to the Landlord and it was accepted as evidence for these proceedings.

In my interim decision of February 16, 2023, the Landlord was given authority to submit evidence to the Residential Tenancy Branch and to serve it to the Tenant, via email.

On May 25, 2023, the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord with the initials "KC", hereinafter referred to as "KC", stated that this evidence was sent to the Tenant, via registered mail, on served to the Tenant on May 30, 2023. "KC" stated that the package was sent to a post office box, which the Tenant stated was "closed" in January of 2023.

When the Landlord was asked why the documents were not served to the email address provided by the Tenant at the hearing on February 16, 2023, "KC" stated that she did not have an email address for the Tenant. The Tenant's email address was provided by the Tenant at the hearing on February 16, 2023 and "EH" was present at that hearing.

I find that the documents submitted by the Landlord on May 25, 2023 were not properly served to the Tenant, as they were sent to a postal box that has not been used by the Tenant for several months. The Landlord was specifically directed to send these documents by email in my interim decision and the Landlord failed to do so. As the Tenant has not received these documents and they were not served in accordance with the directions provided in my interim decision, the documents were not 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 or a rent reduction for deficiencies with the rental unit and other issues with the tenancy?

Should the security deposit be returned to the Tenant?

Background and Evidence:

The Landlord and Tenant agree that:

- The tenancy began on November 16, 2020;
- The Tenant gave written notice to end the tenancy, effective January 31, 2023
- The monthly rent was \$785.00;
- Rent was due by the first day of each month;
- The Tenant paid a security deposit of \$392.50 on November 15, 2020; and
- The Tenant paid a pet damage deposit of \$100.00 on June 26, 2021.

The Tenant stated that a forwarding address was left at the Landlord's office on January 17, 2023. "KC" stated that the Landlord received this forwarding address, although she does not know when it was received.

"KC" stated that nobody present at the hearing was an agent for the Landlord when this tenancy ended, however she was told the pet damage deposit and the security deposit were returned to the Tenant. She stated that there is no record of the date of return.

The Tenant stated that his security deposit of \$392.50 was returned on March 01, 2023 and the pet damage deposit has not yet been returned.

"KC" stated that the Landlord has not filed an Application for Dispute Resolution seeking to retain the security/pet damage deposit and the Landlord did not have written authority to retain them.

The Tenant is seeking compensation for costs associated to a cockroach infestation, which are detailed on a Monetary Order Worksheet. These include costs of replacing items that needed to be discarded due to the infestation and cleaning costs related to the infestation.

In support of the claim for the cockroach infestation, the Tenant stated that:

- The infestation was reported to a building manager with the initials “CH”, on April 08, 2022;
- Traps was installed on May 19, 2022;
- The treatment on May 19, 2022 was not effective;
- The infestation was reported again on July 15, 2022, August 11, 2022, and October 03, 2022;
- No treatments occurred after May 19, 2022;
- The photographs he submitted in evidence are of cockroaches found in the unit;
- He submitted no photographs from an expert to establish that items contaminated by cockroaches need to be discarded, rather than cleaned;
- He submitted no photographs of items damaged as a result of the infestation; and
- He vacated the unit as a result of the infestation.

In response to the claim for the cockroach infestation, “AL” stated that:

- “CH” no longer works as an agent for the Landlord;
- He was unable to find any record of a report of a cockroach infestation; and
- He was unable to find any record of a treatment on May 19, 2022.

The Tenant is seeking a rent reduction because he alleges that he was unable to use the bathroom for 51 days. The Tenant is also seeking costs associated to being unable to use the bathroom.

In support of the claim for compensation relating to being unable to use the bathroom, the Tenant stated that:

- He was unable to use the bathroom because of mold and the cockroach infestation;
- He did not use the bathroom after November 10, 2022; and
- He did not provide any photographs of the condition of the bathroom because he had sealed the bathroom and did not enter into it after November 10, 2022.

“Agent for the Landlord” stated that the Tenant was offered alternate accommodations but he chose not to move. The Tenant stated that he was initially offered alternate accommodations but the Landlord did not follow through with that promise.

The Tenant is seeking compensation for costs associated to moving out of the rental unit, which includes the need to establish a post office box and for food he could not take with him. The Tenant contends that he was forced to move out of the rental unit because the Landlord did not respond to his concerns about the cockroach infestation.

The Tenant is seeking compensation for installing a padlock hasp on his front door. The Tenant stated that he installed this hasp because EH put glue in his front door lock and he wanted to install the hasp to provide him with extra security. He acknowledges that the Landlord has not entered the rental unit without proper authority. He stated that EH told him that he had inserted the glue.

EH needed to leave the teleconference prior to this issue being discussed. AL stated that EH denies inserting glue into the lock.

The Tenant is seeking to recover the cost of “emergency repairs” to his front door lock. The Tenant submits that:

- He discovered the glue in the lock at 3:30 p.m. on December 02, 2022;
- He had an urgent need to open the door so that he could ensure the safety of his cat;
- He informed EH of his urgent need to access his unit;
- By 5:19 p.m. EH had not provided him with access to the unit;
- He contacted a locksmith who provided him with access to the unit; and
- He advised EH that he had access to the unit so EH cancelled the Landlord’s locksmith.

Analysis:

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that this tenancy ended on January 31, 2023.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant provided a forwarding address, in writing, on January 17, 2023.

I find that the Landlord had until February 15, 2023 to either file an Application for Dispute Resolution seeking to retain the security/pet damage deposit or to return those deposits to the Tenant. As the Landlord did not do either by that date, I find that the Landlord failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit of \$392.50 and double the pet damage deposit of \$100.00, which is \$985.00. This payment must be reduced by the \$392.50 that the Tenant acknowledges was returned on March 01, 2023, leaving a balance due of \$592.50.

The Tenant is also entitled to interest of \$2.17 on the pet damage and security deposits.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant reported a problem with cockroaches to the Landlord on various dates in 2022. I find this testimony was corroborated by copies of text messages sent by the Tenant, which were submitted in evidence.

I find "AL"'s testimony that he can find no record of these reports is insufficient to refute the evidence before me.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Landlord made one ineffective attempt to address the infestation in May of 2022 and that the Landlord made no subsequent attempts to address the issue, in spite of being aware of an on-going problem.

I find "AL"'s testimony that he can find no record of a treatment is insufficient to refute the evidence before me.

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 that the Landlord failed to comply with section 32(1) of the *Act* when the Landlord failed to remedy the cockroach infestation.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

While I accept the Tenant's testimony that he discarded numerous items that were contaminated as a result of the cockroach infestation, I find that the Tenant submitted insufficient evidence to establish that this was necessary. In reaching this conclusion, I was influenced, in part, by the absence of any expert evidence that establishes his items were so damaged that they needed to be discarded, rather than cleaned.

In concluding that there was insufficient evidence to establish that the Tenant's items needed to be discarded, rather than cleaned, I was further influenced by the photographs submitted in evidence. While those photographs show there were some insects that the Tenant contends are cockroaches, they do not establish that there was an excessive amount of them. As such, I cannot conclude that the infestation was severe enough to require items to be discarded.

In spite of the absence of evidence from an expert, I find it reasonable to conclude that some additional cleaning would be required as a result of this infestation and that the Tenant is entitled to compensation for costs associated to cleaning.

The Tenant listed several items on the Monetary Order Worksheet that could be reasonably attributed to treating the infestation and cleaning the unit as a result of the infestation. The Tenant submitted receipts to support those claims. After reviewing those documents, I find that the Tenant is entitled to compensation for these supplies, in the amount of \$86.66.

The Tenant recorded costs of using a laundromat on the Monetary Order Work, which total \$147.75. It is difficult, if not impossible, to submit receipts for expenses of this nature. I find the amount of this claim to be reasonable and I therefore grant compensation in this amount in spite of the absence of receipts.

I find that the Tenant has submitted insufficient evidence to establish that he was unable to use his bathroom for any period of time as a result of a cockroach infestation and mold. In reaching this conclusion I was heavily influenced by the absence of any evidence to corroborate his submission that the bathroom could not be used. When a tenant alleges that a bathroom cannot be used, I find the tenant must provide some evidence, such as photographs, to support that submission.

As the Tenant has submitted insufficient evidence to establish that his bathroom was not suitable for use, I dismiss the Tenant's application for a rent refund and for any costs associated to being unable to use the bathroom.

While I accept that the Landlord did not respond appropriately to the Tenant's concerns about the presence of cockroaches, I find that the Tenant has failed to establish that the infestation rendered the rental unit unsuitable for occupation. As has been previously stated, the photographs submitted by the Tenant show there were some insects in the unit but they do not establish that there was an excessive amount of them. As such, I cannot conclude that the infestation was severe enough to render the unit uninhabitable.

Rather than vacating the unit as a result of the infestation, the Tenant had the option of filing an Application for Dispute Resolution in which he sought an Order requiring the Landlord to properly address the infestation.

As the Tenant has failed to establish it was necessary to vacate the unit as a result of the infestation, I dismiss the claim for costs associated to moving.

I find that the Tenant has submitted insufficient evidence to establish that there was a need to install a padlock hasp on the front door of his rental unit. While I find it highly unlikely that an agent for the Landlord would damage the Landlord's property by inserting glue into a lock, I find the hasp was not necessary even if that were true. The Tenant hired a locksmith to install a new lock and he therefore had a reasonable method of securing his unit. In the absence of evidence to show that the Landlord has attempted to enter his unit without lawful authority, I cannot conclude that the Tenant

needed a hasp to provide extra security. I therefore dismiss the application to recover the costs of installing the padlock hasp.

On the basis of the undisputed testimony, I find that someone put glue in the Tenant's front door lock on December 02, 2022, which prevented him from accessing the rental unit. I find that the need to repair the lock constitutes an "emergency repair".

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are:

- (a)urgent,
- (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c)made for the purpose of repairing
 - (i)major leaks in pipes or the roof,
 - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii)the primary heating system,
 - (iv)damaged or defective locks that give access to a rental unit,
 - (v)the electrical systems, or
 - (vi)in prescribed circumstances, a rental unit or residential property.

Section 33(3) of the *Act* authorizes a tenant to make "emergency repairs" only when all of the following conditions are met:

- (a)emergency repairs are needed;
- (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

After reviewing the emails exchanged between the parties, I find that CH responded to the Tenant's request for "emergency repairs" by informing him that a locksmith would come to the unit at 6 p.m. In addition, I find that CH clearly informed the Tenant not to have an alternate locksmith make the repair. In spite of that information, I find that the Tenant hired a locksmith to repair the door sometime prior to 6 p.m.

I find that the Tenant repaired the lock before providing the Landlord with a reasonable opportunity to complete the repair, as is required by section 33(3)(c) of the *Act*. I do not

find that a delay of less than 3 hours is unreasonable in these circumstances. While I understand that the Tenant's cat was inside the unit, there is no evidence to suggest the cat was in distress, and cats are known to be self-sufficient for extended periods of time.

Section 33(5) of the *Act* requires a landlord to reimburse a tenant for "emergency repairs" in certain circumstances. Section 33(6)(a) of the *Act* stipulates that a landlord does not have to reimburse a tenant for "emergency repairs" if the tenant made the repairs before one or more of the conditions in section 33(3) were met.

As the Tenant repaired the lock before providing the Landlord with a reasonable opportunity to complete the repair, as is required by section 33(3)(c) of the *Act*, I find that he is not entitled to compensation for that repair. I therefore dismiss the claim to recover the cost of repairing/replacing the lock.

Conclusion:

The Tenant has established a monetary claim of \$436.33, which includes:

- \$592.50 for double the security deposit and pet damage deposit, less the \$392.50 that was returned on March 01, 2023;
- \$2.17 for interest of the security/pet damage deposit;
- \$86.66 for cleaning costs; and
- \$147.50 for laundry costs.

I grant the Tenant a monetary Order for \$436.33. If the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, 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: June 22, 2023

Residential Tenancy Branch