



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTCOTT MIDDLEGATE RENTAL AGENCY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRT, MNDCT, RR, AAT, PSF, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- a monetary order for the cost of emergency repairs;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order allowing access to the rental unit for the tenants and the tenants' guests;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

Both tenants 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. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing the landlord agreed to the tenants' claim of \$99.75 for the cost of emergency repairs, and I make that order.

During the course of the hearing, I determined that the tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided refers to the

tenants' application for monetary compensation, and that the tenants be permitted to reduce rent by the amount of compensation ordered.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants 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 loss of use of the rental unit?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and more specifically by the amount of compensation awarded?
- Have the tenants established that the landlord should be ordered to provide access to and from the rental unit for the tenants and the tenants' guests?
- have the tenants established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or the law, and more specifically lawful use of the rental unit?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to pay compensation to the tenants?

Background and Evidence

The first tenant (GH) testified that this month-to-month tenancy began on August 1, 2021 and the tenants still reside in the rental unit. Rent in the amount of \$1,797.00 was originally payable on the last day of each month for the following month, which has been increased to \$1,823.00 and another increase will be effective on August 1, 2023. There are no rental arrears. On July 8, 2021 the landlord collected a security deposit from the tenants in the amount of \$898.50, which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 3 buildings with 4 stories in each building.

The tenant further testified that while working from home, there was a leak out of a hole in the ceiling, which was caused from power washing a floor above by a person hired by the landlord's agent. It created a hole in the drywall and insulation between the floors, which started flaking. It looked like the ceiling was caving in from saturation and

exposed a black substance, and that a leak had been there for awhile. The tenant's girlfriend is very sensitive to mold and pollen. The tenant told the landlord's agent, who agreed it was caused by the power washing, and a contractor would be called to repair the ceiling the next day. However, the person who arrived was the same person who did the power washing. The tenants left the apartment, not sure if there was mold getting into the air.

The tenants found out that the landlord's contractor was going to cut open the ceiling, and the landlord's agent said there was no asbestos. The tenant didn't know if that was believable and called a friend who is a professional engineer and does abatement work removing asbestos from hospitals. The tenant sent a photograph, and the engineer said it appeared to be mold and could be asbestos, so the tenant asked him to attend prior to the landlord's contractor arriving.

The landlord's plan was to cover and patch it without doing any testing. The tenant's engineer took a sample to a laboratory, which came back positive for asbestos. The tenants' trust with the landlord was broken. The landlord's agent admitted that the test came back positive, and stated that the owner never told the landlord's agent that there was asbestos, but that it was a small amount. A small amount is dangerous.

The contractor was also not notified about asbestos, and WorkSafe BC requires a contractor to have proof of none. No proof was given, and there was no environmental testing. The tenant told the landlord's agent that a contractor had to be hired, not a painter who is not trained to handle asbestos. The tenant spoke to the contractor about handling asbestos and found out that the contractor had not received any training in that regard; his trade is drywall and painting. The tenant told the landlord's agent that the person could not work in the apartment or enter, and the landlord had to hire proper abatement contractors in order to handle it.

Following this, the tenant asked the landlord's agent about a plan, who kept saying not to worry, and at no time did the landlord's agent tell the tenants to save receipts for food or accommodation, or that the tenants would get any compensation.

On the following Friday at 7:00 p.m. the landlord's agent called the tenant saying that an abatement contractor would arrive in the morning to do repairs, and the tenant replied that he wanted to talk to the contractor first. It was the same company that the tenant had proposed at the beginning.

Once repairs were completed, the tenants asked several times for compensation for time, per diem rates, fees and reimbursement for rent and food. The landlord's agent

replied that the director of the landlord company would have to be contacted, who then said to provide receipts. The tenants didn't have any and wanted per diem compensation and reimbursement of rent and for the receipt for environmental testing. At the end of January, 2023 they again asked for receipts, saying that the tenants were sent letters, but the tenants replied that they didn't receive any letters. Eventually, at the end of January, 2023 the tenants received a letter taped to the door.

The leak happened on November 21, 2022 and it took until the end of January, 2023 when communication stopped and the landlord stopped replying to the tenants' messages. The tenants were not able to occupy the rental unit from November 21 to 28, 2022.

The second tenant (LL) testified that the tenants asked that all communication to be in writing over email, but the landlord's agent kept calling the other tenant, so the tenants tried to follow-up by email.

The landlord was also allowing workers to enter the rental unit without permission or notice. The lies throughout were constant, as well as lack of safety for the tenants and workers. It was frustrating to have to coordinate all of this and the time it took to get on board and get some action. The landlord was cutting corners. The tenants kept asking but never got any answers. There was no plan or helpful information, even when the tenants asked if there was someone they could talk to, such as the directors of the landlord company, and there was no helpful information from the landlord's agent.

The tenants have provided a copy of a Monetary Order Worksheet, but I was not able to open it. The application indicates that the tenants seek monetary compensation in the amount of \$3,097.58. Copies of emails exchanged between the parties has been provided for this hearing, wherein the tenants requested compensation of a daily rental rate from November 21 through November 28, a daily meal stipend for the 2 occupants, and recovery of the \$99.75 laboratory testing.

The landlord's agent testified that the engineer friend called by the tenants entered without wearing any protective gear and didn't caution anyone to do so or to leave the apartment. He put his finger in the hole and put it to his nose. He should have arrived prepared.

The landlord's agent has not seen any report about mold in the apartment, and has acted in accordance with the authority granted to the landlord's agent by the landlord company as soon as was possible.

The letters were mailed to the tenants, first on December 10, 2022 asking for receipts for hotels and meals. A copy has been provided for this hearing. The tenants claimed they didn't get it which is why a new letter was taped to the door dated January 13, 2023, and a copy of that letter has also been provided.

The landlord's agent told the tenants that to the best of her knowledge there was no asbestos and the landlord's agent had not seen any testing results.

Analysis

Where a party makes a monetary 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 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.

I have reviewed all of the evidentiary material, including emails and testing results, and there is no question that the tenants were not able to occupy the rental unit from November 21, 2022 to November 28, 2022 which amounts to 7 days. I am satisfied that the tenants are entitled to a reimbursement of rent paid on a per diem basis of \$419.30 ($\$1,797.00 / 30 = \$59.90 \times 7 = \419.30).

I accept the undisputed testimony of the tenant that the landlord's agent did not advise the tenants to keep receipts for hotel costs or meals, but that does not satisfy element 3 in the test for damages.

I refer to Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss, which explains that the law permits me to award "nominal damages," which may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. It also explains that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

In the circumstances, I find that the tenants have established a monetary claim of \$100.00 daily, or \$700.00, inclusive of alternate accommodation and meals.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Having found that the tenants are entitled to \$99.75 for the laboratory report, \$419.30 for rental reimbursement, \$700.00 for nominal damages and recovery of the \$100.00 filing fee, I grant a monetary order in favour of the tenants in the amount of \$1,319.05. I order that the tenants be permitted to reduce rent for a future month by that amount, as claimed by the tenants, or may serve the order to the landlord and file it for enforcement in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

The tenants are now able to access the rental unit, and I dismiss that portion of the application.

Similarly, the tenants' application for an order that the landlord provide services or facilities required by the tenancy agreement or the law has been dealt with, and I dismiss that portion of the application.

The tenants' application for an order that the landlord comply with the *Act* or the tenancy agreement seeks the monetary compensation, which has been ordered in this Decision. No further order has been sought or proven, and I dismiss that portion of the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,319.05, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

The tenants' application for an order that the landlord provide access to and from the rental unit for the tenants and the tenants' guests is hereby dismissed.

The tenants' application for an order that the landlord provide services or facilities required by the tenancy agreement or the law is hereby dismissed.

The tenants' application for an order that the landlord comply with the Act or the tenancy agreement is hereby dismissed.

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: June 27, 2023

Residential Tenancy Branch