Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, MNR, MNDC, OLC, RP, PSF, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order for emergency repairs and renovations; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to have the landlord make repairs; provide services or facilities required by law; to allow a rent reduction for repairs, services, or facilities agreed upon but not provided.

The hearing was conducted in person in Hearing Room 1 at 3350 Douglas Street in Victoria, British Columbia and was attended by the applicant tenant, her witness and both respondent landlords.

While the application deals with a number of issues there was insufficient time in the original hearing held on March 16, 2011to hear all matters. In the interim decision issued on March 17, 2011, I accepted jurisdiction on matters related to this tenancy, dismissed the portion of the tenant's application seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use and granted the landlord an order of possession based on that Notice.

This reconvened hearing dealt with the monetary matters outlined below. This decision must be read in conjunction with the interim decision dated March 17, 2011.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to make repairs to the unit or property; to provide services or facilities required by law; allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; to a monetary order for compensation for the cost of emergency repairs; for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 32, 33 67, and 72 of the *Act.*

Background and Evidence

The tenant asserted that as a result of her understanding of an agreement the parties had to transfer ownership of the house (building only) the tenant made substantial repairs and renovations to the rental unit. She stated that the landlords attended the rental unit on a couple of occasions during the tenancy and if they had a concern about what she was doing they should have informed her at that time.

The tenant testified that in November 2008 she contacted the landlord regarding mould in one of the bedrooms and the landlord agreed to cover the cost of drywall for one wall but that in order to repair it she had to, at her own cost, remove the drywall; bleach the walls; install insulation and a vapour barrier; drywall; paint and trim.

She further testified that in February 2009 that a neighbour approached her indicating that the neighbour had contacted the regional district to find out what to do about the stench from this property's septic field. The tenant stated that she requested the landlord make suitable repairs but that the landlord denied the request.

As a result, the tenant stated she changed her usage of the septic system and reduced the amount of flushing; adjusted her clothes washing habits; length of showers and other general usage. The tenant asserts this had a major impact on her quality of life and ability to use the property.

The tenant stated also that in November 2009 she contact the landlord to repair the roof as she had found substantial leaking and despite trying to patch up the roof the leaks continued. The tenant testified the landlord refused to make repairs and as such the tenant had to purchase a tarp to cover the leaks.

The tenant testified that after this she never requested any repairs from the landlord and that because she believed that she had an agreement with the landlords that she would take possession of the building at a future date she took it upon herself to make additional repairs and substantial renovations to the house.

The tenant makes the following financial claim:

Description	Amount
Direct Expense (materials and supplies)	$5,586.05
Labour (for all renovations and repairs)	$17,525.00
Loss of Enjoyment and reduced use of house due to landlord neglect	$1,888.95
Total	$25,000.00

The tenant's witness provided corroborating testimony with regard to the condition of the roof during the tenancy; the septic field and in addition recalled speaking to

someone about the problems of the high water table on the property in relation to the septic system; and plumbing.

The witness also testified that he understood the tenant and the landlords had an agreement to rent for about 2 years from the time they started to build their new house on the property to the completion of that construction project. He also stated it was made clear after a certain point that the landlord did not want to deal with costs of any changes.

The witness testified that there were additional problems with the main bathroom and in particular leaking behind the tub surround and caulking that was discovered when they took the laundry room apart.

The witness testified the house was in disrepair and they would work all day at their jobs and then come home and work all evening. He also stated the tenant discussed matters with the landlords but that he was not usually involved in the discussions.

The landlords testified that they had, at one point, considered transferring the ownership of the building to the tenant but that the tenant had indicated that she could not afford to move it and so the landlords assumed this would not occur.

The landlords assert that the only agreement, outside of the tenancy agreement, they had with the tenant was that they would pay for the drywall in the one bedroom that the tenant identified in November 2008 as potentially having mould. The landlords state they still stand by that offer, but also state, as per their letter dated November 25, 2008 to the tenant, that they were clear that any other changes that the tenant "wished" to make were up to the tenant to pay for.

The landlords assert the changes the tenant made were primarily cosmetic and that the tenant never requested repairs as she has stated. They continue that the work was completed without permits from local authorities or completed by licensed contractors (i.e. plumbers, electricians). The landlord suggests that none of the work undertaken by the tenant could be considered as emergency repairs as outlined in Section 32 of the *Act*.

Analysis

As determined in the interim decision dated March 17, 2011 I have found that a tenancy exists. As a result, I find that matters related to the condition of the rental unit during the tenancy and each party's obligations for repairs and emergency repairs are governed under the *Act*.

In relation to the tenant's application for an order requiring the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to make repairs to the unit or property; to provide services or facilities required by law; and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and

in light of my previous determination that the tenancy will end on April 30, 2011 I find as follows:

1. The tenant has not identified any repairs, notwithstanding the tenant's request for a new fridge that are currently required to meet the landlord's obligations under Section 32 to 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. Despite the landlord's testimony that they have purchased a new fridge for the rental unit and have just not yet installed it, the tenant has failed to provide any evidence that a new fridge is required, and I dismiss the portion of the tenant's application requesting the landlord be order to make repairs.
2. The tenant has provided no evidence that the landlord has failed to provide services or facilities required by law, I dismiss the portion of the tenant's application seeking an order to provide such services.
3. As the tenant will not be responsible for any future rent payments and in the absence of any evidence from the tenant indicating the parties had agreed to any repairs, services or facilities and that these were not provided, I dismiss the portion of the tenant's application to reduce the rent.

To be successful in a claim for compensation for loss or damages the party making the claim has the burden to provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the loss or damage; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Both parties have relied on the letter dated November 25, 2008 from the landlords to the tenant as the basis for much of their respective understanding of the agreements between themselves. I first note that this letter is dated prior to the start date of the tenancy on December 1, 2008. In the letter the landlords express that they "cannot possibly do anymore electrical or other renos. At this point, we feel it is up to you to pay for whatever changes you wish to make."

From this statement, I find the landlords had no opposition to the tenant making any renovations that she chose to make, however, I find the landlord clearly states that for any renovation work the tenant will be responsible for the payment of any costs. As such, I dismiss the portions of the tenant's application seeking compensation for any work that she has classified as renovations.

I find nothing in this letter that suggests the landlord is not willing to deal with any repairs that may have been required during the tenancy. As such, I must rely on additional evidence and testimony provided in these hearings and as noted in the

interim decision, disputed testimony in the absence of any corroborating physical evidence is difficult for a third party to determine the veracity of the respective positions.

The first repair noted by the tenant was that regarding mould in the north-west bedroom prior to the start of the tenancy. The tenant submits that because of mould she found in this room she had to remove the drywall and insulation; bleach the structure remaining; reinsulate and install a vapour barrier; drywall and paint and then make and install moulding to match the existing trim.

In the letter dated November 25, 2008 the landlords acknowledge the tenant wanted to "tear out the north wall....to check for mold. We agreed to pay for the drywall ONLY, for this work. Since more than that has been torn out, we are worried that you are expecting us to pay for all of this drywall and paint etc. That was not our intent."

In the absence of any testimony or evidence that the tenant discussed with the landlords the expanded scope of her mould investigation, I find the tenant failed to do all that is reasonable to minimize any loses, in accordance with Section 7 of the *Act*.

As a result, I find the tenant has failed to substantiate a claim for any costs over that agreed to by the parties prior to and confirmed in the November 25, 2008 letter for the cost of drywall in this bedroom. I find, based on the receipts submitted by the tenant for the period of time between November 17, 2008 and December 23, 2008 the tenant spent $275.73 on drywall.

In relation to the septic field problems, I accept that there may have been a problem with the septic field that may have resulted from the high water table. Based on the landlord's testimony I accept that the landlord was aware of an inherent water table issue with the field.

However, in the letter dated February 26, 2011from the tenant's neighbour, the neighbour states: "She [the tenant] asked us if we would refrain from calling the [regional district] and causing such hardship to the owner and possibly herself. She told us that she would try and cut down on the water usage and do laundry one load at a time and do whatever she could to reduce water overflow from the tank."

As such, I find the tenant deliberately encouraged the neighbour and the neighbour acted on that encouragement to not lodge a complaint and the tenant herself did not lodge a complaint to the regional district which may have led to the landlord being required to remedy the septic field issues. The tenant cannot now benefit, in the form of compensation for loss of enjoyment, from her deliberate actions contrary to her obligations under Section 7 of the *Act*.

In the absence of any testimony or witness statements from any third parties having firsthand knowledge of or documentary evidence corroborating the tenant's testimony that she requested repairs to the roof and in light of the landlords' testimony that they

did not receive any requests for repairs to the roof, I find the tenant has failed to establish the landlord was aware of a repair request specifically for the roof.

As I have found the tenant has failed to establish she requested repairs of the landlord for the roof problems, I further find the tenant has failed to take reasonable steps to minimize any damage or loss she may have suffered as is required in Section 7 of the *Act*.

As per the tenant's testimony I accept that she never again, after November 2009 requested any further repairs. As such, the tenant has failed to take reasonable steps as required under Section 7 to minimize any losses suffered for any of the other repairs for which she is currently requesting compensation.

Conclusion

Based on the above, I find that the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **$275.73** comprised of compensation for drywall purchased in 2008.

As the tenant was mostly unsuccessful in her application, I dismiss her request to recover the filing fee of $100.00 for this application.

This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) 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: April 08, 2011.

Residential Tenancy Branch