Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

RECONSIDERATION DECISION

Dispute Codes:

MNDC, OLC, ERP, RP

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to make emergency repairs, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement.

This Application for Dispute Resolution was the subject of a dispute resolution hearing on October 03, 2011. In a decision, dated October 03, 2011, the Arbitrator who conducted this hearing dismissed the Tenant's claims.

The Tenant applied for a judicial review of the Arbitrator's decision of October 03, 2011 and on May 30, 2012 Mr. Justice Davies set aside the decision and remitted the matter back to the Residential Tenancy Branch for reconsideration.

A hearing was convened on December 04, 2013 for the purposes of reconsidering the merits of the Tenant's original Application for Dispute Resolution. At this hearing the Tenant's Legal Counsel indicated that she understood the matter would be determined by simply reviewing documents that had been previously submitted in evidence. The hearing was adjourned to provide Legal Counsel with an opportunity to prepare for a participatory hearing.

The hearing was reconvened on February 18, 2014 and was concluded on that date.

It is my understanding that the Residential Tenancy Branch served the Landlord with notice of the December 04, 2013 hearing and with notice of the February 18, 2014 hearing. Legal Counsel for the Tenant stated that the Tenant served the Landlord with the Notice of the Hearing for February 18, 2014, by regular mail, on January 31, 2014. I am satisfied that the Landlord has been served with notice of this hearing and the hearing proceeded in the absence of the Landlord.

Legal Counsel for the Tenant stated that all of the documents mentioned in this introduction were mailed to the Landlord at a mailing address in Quesnel, B.C. Legal Counsel stated that the Landlord provided this mailing address to the Supreme Court of British Columbia on September 09, 2013 in relation to an unrelated tenancy matter. Legal Counsel stated that the mailing address was subsequently provided to her office, which is acting on behalf of a party in that unrelated tenancy matter.

The Tenant submitted a Petition Record to the Residential Tenancy Branch on November 25, 2013. Legal Counsel for the Tenant stated that the Petition Record was sent to the Landlord, via regular mail, on November 25, 2013. On the basis of this undisputed evidence, I find that the Petition Record was served to the Landlord and it was accepted as evidence for these proceedings.

The Tenant submitted an evidence binder to the Residential Tenancy Branch on February 07, 2014. Legal Counsel for the Tenant stated that the evidence binder was sent to the Landlord, via regular mail, on February 07, 2014. On the basis of this undisputed evidence, I find that the evidence binder was served to the Landlord and it was accepted as evidence for these proceedings.

I note that the Tenant submitted a significant amount of documentary evidence regarding this matter. Although all of that evidence has been reviewed, only documents that were significant to my decision in this matter have been referenced in this decision.

At the outset of the hearing on February 18, 2014, the Tenant withdrew the application for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to make emergency repairs, and for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for deficiencies with the rental unit and the loss of the quiet enjoyment of the rental unit?

Background and Evidence:

Legal Counsel for the Tenant stated that this tenancy began in the middle of March of 2010 and that the Tenant agreed to pay monthly rent of $600.00, with the exception of March, for which they agreed to pay monthly rent of $150.00.

Legal Counsel for the Tenant stated that this tenancy ended without notice from either side, when the B.C. Housing Commission offered the Tenant alternate accommodation. In his written declaration, dated February 06, 2014, the male Tenant stated that they moved at the end of July of 2011. In her written declaration, dated February 06, 2014, the female Tenant stated that they moved in July of 2011.

The Tenant submitted a signed written submission from the male Tenant and a signed written submission from the female Tenant, both dated February 06, 2014. At the hearing on February 18, 2014 both Tenants stated that all of the information in the written submissions is true.

The Tenant submitted an unsigned written submission from the male Tenant and an unsigned written submission from the female Tenant, which outline a variety of deficiencies with the tenancy. These submissions were submitted with the original Application for Dispute Resolution. At the hearing on February 18, 2014 both Tenants stated that all of the information in the written submissions is true.

In the original written submissions, both Tenants declared that they moved into the rental unit in April of 2010. In the written submissions dated February 06, 2014 the female Tenant declared that they moved into the rental unit in middle of March of 2010.

The Tenants claim is based on their written submissions and the testimony they provided at the hearing on February 18, 2014.

In the original written submissions, both Tenants declared that only one of the two shared bathrooms in the residential complex works; that there is no kitchen in the residential complex; that 30 people in the complex share one shower; and that the building has only been sprayed for bedbugs on one occasion.

In the written submissions dated February 06, 2014 both Tenants declared that there were two bathrooms on each floor of the residential complex, one of which had a toilet and one of which had a toilet and shower. The female Tenant declared that for approximately 4 months they were not able to use the bathroom on their floor which had the shower and the male Tenant declared that for approximately 4-5 months they were not able to use this bathroom.

In his original written submission the male Tenant declared that there was a fridge in the unit at the start of the tenancy and that the Landlord disposed of the fridge when the tenancy began. In her written declaration, dated February 06, 2014, the female Tenant declared that there was a fridge in the rental unit at the start of the tenancy; that they purchased a fridge from their neighbour; and that the Landlord would not let them take the fridge when they vacated the rental unit.

In her original written submission the female Tenant declared that there were mice and cockroaches in the rental unit; that mice can be seen in the holes in the hallway walls; and the working bathroom is not cleaned. She declared that the window in the rental unit is broken; that the hole in the window was inadequately repaired; that two walls in the rental unit are patched, but not painted; and that the smoke alarm is not working.

In his original written submission that male Tenant declared that there was debris in the hallways; that the fire escapes were blocked and/or locked at night; there were no fire extinguishers on their floor; and that he was having a reaction to the mould. In her

written submission dated February 06, 2014 the female Tenant declared that one fire escape was padlocked 24/7.

In his original written submission, the male Tenant declared that whenever he complains about the conditions in the rental unit the Landlord tells him to "keep his council". In her written submission dated February 06, 2014 the female Tenant stated that the Landlord would not repair problems when they were reported.

The Tenant submitted an administrative report from the City of Vancouver, dated May 02, 2011, which indicates there have been numerous violations of the Building By-law and the Standards of Maintenance By-law in this residential complex. The report indicates that responses to City orders to rectify the deficiencies have been slow, or non-existent.

The report outlines a variety of deficiencies in individual rental units, although none are noted in the Tenant's rental unit. In relation to the allegations being made by the Tenant, the report indicates that a number of tenants reported bedbug infestations in the rooms; that smoke alarms in residential units are missing or not working; there are broken windows; and there are holes in the walls.

Legal Counsel for the Tenant argued that the Tenant should be compensated for these deficiencies in an amount that is equivalent to a 25% rent reduction.

In the original written submissions, both Tenants declared and that there is a "no guest policy" which negatively impacts their social lives. In the written submission dated February 06, 2014 the Tenant declared that she told guests not to visit because of this policy.

In his original written submission the male Tenant declared that the Landlord treats him "like trash"; is constantly belittling him; and that the Landlord physically intimidated him into having his methadone prescription filled at the Landlord's pharmacy. In the written submission dated February 06, 2014 the male Tenant declared that the Landlord told him he would be evicted if he did not get his methadone prescription from the Landlord; that the Landlord paid him $10.00 per week for his methadone prescription; and that he believes the methadone he was receiving from the Landlord was substandard.

In the original written submission the male Tenant declared that the Landlord enters their room all the time and the female Tenant declared that the owner and manager often enter their room without permission.

At the hearing the male Tenant stated that their personal property was damaged by bedbugs and mice. He stated that the feces from the bedbugs and cockroaches caused their electronics to "short". He stated that they purchased a refrigerator during this tenancy but they could not take it with them at the end of the tenancy because it was damaged by bedbugs and mice.

In his written submission, dated February 06, 2014, the male Tenant declared that the list of damaged property that was submitted is a list of property they could not move at the end of the tenancy because it was either too damaged or it was infested with bedbugs, cockroaches, and mice.

In her written submission, dated February 06, 2014, the female Tenant declared that the list of damaged property that was submitted is a list of property they could not move at the end of the tenancy because it was either too damaged or it was infested with bedbugs, cockroaches, and mice. She declared they were not able to move the refrigerator they had purchased during this tenancy because the Landlord said it was is refrigerator and he would not permit them to move it.

The Tenant submitted a list of the damaged property, which totals $1,753.00. The Tenant is seeking compensation for the damaged property.

Legal Counsel for the Tenant stated that the Tenant does not have receipts for the damaged property and that the damaged property is common household property, for which people do not normally retain receipts.

In his written submissions the male Tenant declared that has worked for the Landlord in a variety of capacities, including encouraging people to move into the residential complex, and that he was not always been paid. In her written submission dated February 06, 2014 the female Tenant declared that she worked for the Landlord for "cash".

In her original written submission the female Tenant declared that the noise from a bar has affected her sleep and health. In her written submission dated February 06, 2014 the female Tenant declared that she was not aware that the bar "downstairs" was attached to the residential complex; that the Landlord did not inform her that heavy metal bands played at the bar during the weekend; that they were informed that the only noise they would hear was from trucks; and that the bar was very loud and would "shake the building". In his written submission dated February 06, 2014 the male Tenant declared that he was not told there would be heavy metal bands playing in the building on weekends.

In their written submissions dated February 06, 2014 both Tenants declared that they did not receive any mail during their tenancy. The female Tenant declared that she has received mail since the tenancy ended.

In the written submissions dated February 06, 2014 both Tenants declared that they were harassed by a neighbour, who would rant and rave outside their door and who, on one occasion, stole an ornament from their door. The Tenants declared that the Landlord did not intervene when he was told about a problem with this neighbour.

In her written submissions the female Tenant declared that she was worried they would be evicted if the Landlord did not like them; that her social life and mental health has

been negatively impacted by the "no guest" policy; that the noise has negatively impacted her sleep and health; and that she began taking anti-depressants during the tenancy.

In his written submissions the male Tenant declared that his social life significantly impacts his social life; that he developed cold sores from the methadone bottles supplied by the Landlord; that he got sick from the methadone supplied by the Landlord; that the conditions of the residential complex caused him "great stress"; and that the conditions of the complex negatively impacted his personal relationship with his co-tenant.

In the written submission dated February 06, 2014 the male Tenant declared that on June 30, 2014 he informed City Council of the conditions of his residential complex. He declared that the morning before he appeared before City Council his methadone prescription was cancelled and he had to obtain a new prescription. He declared that two days after he appeared before City Council an unknown male assaulted him and told him "that's what you get for your ten dollars". He declared that he believes the statement was a reference to the $10.00 the Landlord paid him for using the Landlord's pharmacy and that the Landlord paid this male to assault him.

In the written submission dated February 06, 2014 the female Tenant declared that before the city council meeting on Thursday, June 30th, an agent for the Landlord knocked on her door and told her that if she went to the council meeting "something bad could happen to your health". She declared that the incident frightened her and that she was worried that they would be evicted.

Legal Counsel for the Tenant argued that the Tenant should be entitled to aggravated damages as a result of the aforementioned non-pecuniary damages suffered by the Tenants during the tenancy.

Analysis:

On the basis of the original written submissions of the Tenants, I find this tenancy began in April of 2010. I favoured the original written declarations of the Tenants over the written declaration of the female Tenant, in which she stated she moved into the rental unit in the middle of March of 2010, simply because the original written declaration of each Tenant corroborates the declaration of the other Tenant. I also find that the submission that was written closest to the start of the tenancy is likely to be more accurate, given how the passage of time frequently impairs the ability to recall dates.

Section 27 of the *Act* authorizes a landlord to terminate or restrict a service or facility that is not essential to the tenant's use of the rental unit as living accommodation and is not a material term of the tenancy, providing the landlord provides 30 days' written notice of the termination or restriction and the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

On the basis of the undisputed evidence, I find that the Tenant was unable to use one of the two shared bathrooms on the Tenant's floor in the residential complex for a period of approximately four months. Even if the Landlord did have the legal right to restrict access to one of the shared bathrooms and the Landlord did provide the Tenant with written notice of his intent to reduce the bathroom facilities, I find that the Tenant is entitled to compensation for the reduced bathroom facilities. I find that the reduced facilities reduced the value of the tenancy by approximately $20.00 per month. As the Tenant contends the bathroom was out of service for approximately four months, I find that the Tenant is entitled to compensation of $80.00 for living with these reduced facilities.

On the basis of the undisputed evidence, I find that a refrigerator was provided with this tenancy; that shortly after the tenancy began the refrigerator was removed from the rental unit; and that the refrigerator was never replaced. Even if the Landlord did have the legal right to remove the refrigerator from the rental unit and the Landlord did provide the Tenant with written notice of his intent to remove the refrigerator, I find that the Tenant is entitled to compensation for the withdrawal of this service. I find that being without a refrigerator in a rental unit without cooking facilities reduces the value of the tenancy by approximately $20.00 per month. Although it is not entirely clear when this service was withdrawn, I find that the Tenant is entitled to compensation of $320.00 for being without a refrigerator for most of the sixteen month tenancy.

On the basis of the undisputed evidence, I find there was an infestation of bedbugs and mice; that a window was broken, that there were numerous fire code violations in the residential complex, that the common bathroom was not cleaned on a regular basis, that there was mould in the residential complex; and that two walls in the unit were not painted. In reaching this conclusion I was influenced by the administrative report from the City of Vancouver, which corroborates many of the Tenants' allegations.

On the basis of the undisputed evidence, I also accept the Tenants' declarations that when problems were reported to the Landlord, the problems would generally not be repaired. On the basis of theses declarations and the administrative report from the City of Vancouver, dated May 02, 2011, I am satisfied that the Landlord knew there were significant deficiencies with the rental unit.

Section 32(1) of the *Act* requires landlords 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* and that the Tenant was living in substandard conditions. I find that the Landlord's failure to address the problems outlined in the written submissions reduced the value of this tenancy by 20%, which is $120.00 per month. Specifically, the Tenant is being compensated for living with bedbugs and mice, mould, a broken window, a shared bathroom that is not cleaned

on a regular basis, two unpainted walls, and several fire code violations. I find that these are significant problems that directly impacted the value of the rental unit. Pursuant to section 67 of the *Act,* I therefore award the Tenant compensation, in the amount of $1,920.00, for the sixteen months the Tenant occupied the rental unit.

I specifically note that the award for deficiencies with the rental unit is based directly on the deficiencies noted in the Tenant's written submission, and not on the deficiencies outlined in the administrative report from the City of Vancouver. While I accept there were considerably more deficiencies with the residential complex than were detailed in the written submission, I find the Tenant is only entitled to compensation for deficiencies itemized in the written submission. This decision is based on the Tenant's obligation to clearly inform the other party of the full details of the claim for compensation.

On the basis of the undisputed evidence, I find that the Landlord spoke to the male Tenant in a belittling manner and the Landlord had a "no guest policy" which limited the Tenants' legal right to have guests in the rental unit. Section 28 of the *Act* stipulates that a tenant is entitled to the quiet enjoyment of the rental unit, including the right to freedom from unreasonable disturbances. I find that the manner in which the Landlord spoke to the male Tenant was a breach of the Tenants' right to the quiet enjoyment of the rental unit. I also find that the "no guest policy", which is a breach of section 30(1) of the *Act*, also breached the Tenants' right to the quiet enjoyment of the rental unit. I award the Tenant compensation of $960.00 for these breaches, which is the equivalent of 10% of the rent due for the duration of the sixteen month tenancy.

On the basis of the undisputed evidence, I find that the Landlord informed the male Tenant he would be evicted if he did not fill his methadone prescription at the Landlord's clinic. I find that the Tenant was coerced into making a significant medical decision because he believed the Landlord would evict him if he did not have his methadone prescription filled at the Landlord's clinic. I find that this interference in the Tenant's personal life seriously breached the Tenant's right to the quiet enjoyment of his rental unit. I therefore award the Tenant compensation of $1,440.00 for this breach, which is the equivalent of 15% of the rent due for the sixteen month tenancy.

I note that the compensation for loss of quiet enjoyment does not take into consideration the allegation that the Landlord provided the Tenant with a substandard prescription, as that claim is outside of my jurisdiction, which is limited to issues directly related to the tenancy agreement and/or the *Act*.

On the basis of the undisputed evidence, I find that the Landlord attempted to discourage the Tenants from appearing before City Council on June 30, 2011. I note that the male Tenant declared that he appeared before City Council on June 30, 2014. As that date is in the future, I find it reasonable to conclude that this was an inadvertent error. I find it reasonable to conclude that the Tenant appeared before City Council on June 30, 2011, which is consistent with the newspaper reports submitted in evidence.

In determining that the Landlord attempted to discourage the Tenants from appearing

before City Council, I was heavily influenced by the undisputed declaration that an agent for the Landlord informed the female Tenant that if she attended the council meeting "something bad could happen to your health". Although there are alternate explanations for why the male Tenant's methadone prescription was cancelled on the morning of June 30, 2011, I find the timing of the cancellation suggests that the prescription was cancelled in an attempt to discourage the male Tenant from appearing before City Council.

I find that the Landlord's efforts to discourage the Tenant from speaking about this tenancy with City Council seriously breached the Tenants' right to the quiet enjoyment of his rental unit, as they had a reasonable concern that their actions would result in an eviction. I therefore award the Tenant compensation of $90.00 for this breach, which is the equivalent of 15% of the rent due for July of 2011.

I note that I have not granted any compensation because the Tenant believes the Landlord was responsible for the male Tenant being assaulted on July 02, 2011. Even if I did accept that the Landlord was responsible for the assault, compensation for that incident is outside of my jurisdiction.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord breached the *Act* when he entered the rental unit without the Tenant's permission. Section 29(1) of the *Act* outlines a variety of circumstances where a landlord can enter a rental unit without permission from the tenant. In the absence of specific details about when and how the Landlord entered the rental unit, I cannot conclude that the Landlord breached section 29(1) of the *Act* during this tenancy.

On the basis of the undisputed evidence, I find that some of the Tenants' personal property was damaged by pests during this tenancy and that the Landlord did not make reasonable efforts to manage the pest infestation. I therefore find that the Landlord is obligated to compensate the Tenant for the damage to his personal property.

Residential Tenancy Branch Policy Guidelines suggest that the normal measure of a claim for lost or damaged property is the market value of the item at the time of loss. I concur with this policy. A Tenant would only be entitled to compensation for the cost of purchasing a used pair of boots, for example, even if the boots were originally purchased for $100.00.

When making a claim for lost property, a tenant bears the burden of proving the condition of the items at the time of loss and the cost of replacing the items. I find that the Tenant has submitted insufficient evidence to support the claim for damaged property, in part because the list submitted does not establish the age and condition of the items on the list.

Even if I were to assume the items were in good used condition, the Tenant has not submitted any evidence to corroborate the costs claimed. While it would be difficult, if not impossible, to clearly establish the cost of replacing each used item on the list, I find

it reasonable to produce some documentary evidence, such as an advertisement from a popular website or an estimate from a store that sells used items, which establishes the value of used clothing and used electronics.

I find that the Tenant has submitted insufficient evidence to establish the value of the damaged items and I therefore dismiss the claim of $1,753.00 for the damaged property. I do find that the Tenant is entitled to nominal damages for the damaged property, in the amount of $1.00, which is simply an acknowledgment that a loss has been suffered. The award is not intended to compensate the Tenants for the loss of their property.

I note that the Tenant is not being compensated because there were no shared kitchen facilities. This decision is based on the absence of evidence to show that the Landlord promised to provide shared kitchen facilities.

I find that any employment contract between the Landlord and either Tenant is not governed by the *Act* or the tenancy agreement and I therefore have no authority to intervene in any employment related matter.

I note that the Tenant is not being compensated because of noise disturbances from the pub located in the lower portion of this residential complex. I find that when this tenancy began the Tenant knew, or should have known, that the bar would generate a significant amount of noise. I therefore find that the Tenant should not be compensated for noise that could be reasonably expected during the tenancy, given the location of the rental unit.

I note that the Tenant is not being compensated because they did not receive mail during this tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence to show that the Landlord withheld the Tenants' mail and by the possibility that the Tenant did not receive mail because none was sent or it was sent to an incorrect address.

I note that the Tenant is not being compensated for disturbances caused by their neighbour. Although in some circumstances a tenant would be entitled to compensation for disturbances caused by another tenant, I find that would only be true if the landlord had the ability to prevent the disturbance. In most tenancies a landlord has a right and an obligation to end a tenancy of another occupant if that occupant is unreasonably disturbing others. Typically, a landlord would not be able to end a tenancy on the basis of alleged disturbances unless they had corroborating evidence from other occupants and they received written details of the disturbances. In these circumstances, I find that I have insufficient evidence to conclude that the disturbances were reported in writing or that the Landlord had the right to end the tenancy of the Tenants' neighbour. I therefore cannot conclude that the Landlord is obligated to compensate the Tenant for the disturbances caused by this occupant.

Residential Tenancy Branch Policy Guidelines suggest that aggravated damages must

be “specifically sought”. In these circumstances, the Tenants have claimed compensation of $5,000.00. Although the Tenant did not specifically use the term “aggravated damages”, I find that the amount of the claim is such that the Landlord knew, or should have known, that the Tenant was claiming for aggravated damages.

On the basis of the undisputed evidence, I find that the conditions of the rental unit did have a negative impact on the health and well being of the Tenants. Aggravated damages may be awarded when there are non-pecuniary losses such as those experienced by the Tenants during this tenancy. Aggravated damages may be awarded to a tenant when the non-pecuniary losses are caused by the willful or reckless behaviour of the landlord. In these circumstances, I am not convinced that aggravated damages are warranted, even if the tenancy did have a negative impact on the well-being of the Tenants.

In reaching this conclusion I was heavily influenced by the fact that the Tenants had the ability to end this tenancy and the ability to apply to the Residential Tenancy Branch to have the breaches remedied. In my view, aggravated damages should not be awarded when a remedy is clearly available to one party and the party does not attempt to remedy the breach for several months.

Residential Tenancy Branch Policy Guidelines suggest that aggravated damages are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. In these circumstances I decline to award aggravated damages in relation to this tenancy, as I have taken into consideration non-pecuniary losses when I determined the amount of compensation due for deficiencies with the rental unit and for breaches of the *Act.*

Residential Tenancy Branch Policy Guidelines suggest that I do not have the authority to award punitive damages for the purpose of punishing this Landlord. Although the Tenant has submitted a significant amount of documentary evidence that shows this Landlord has a history of breaching the *Act,* I have made a concerted effort to limit compensation in this matter to the specific claims outlined by the Tenant.

Conclusion:

The Tenant has established a monetary claim of $4,811.00, which is comprised of $400.00 for withdrawing the use of a fridge and one bathroom for a period of time, $1,920.00 for living with a variety of deficiencies with the rental unit, $2,490.00 in compensation for the loss of quiet enjoyment, and $1.00 in nominal damages. I therefore grant the Tenant a monetary Order for $4,811.00. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: February 25, 2014

Residential Tenancy Branch