Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0847566 B.C. Ltd. and Wilson Recovery Society
and [tenant name suppressed to protect privacy]

RECONSIDERATION DECISION

Dispute Codes:

MNSD, MNDC, OLC, ERP, RP

Introduction:

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, 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 September 27, 2011. The Arbitrator who conducted that hearing dismissed the Tenant's claims.

The Tenant applied for a judicial review of the September 27, 2011 decision and on May 30, 2012 Mr. Justice Davies set aside the Arbitrator's 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 Legal Counsel for the Tenant 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, and is the Tenant entitled to the return of the security deposit?

Background and Evidence:

Legal Counsel for the Tenant stated that this tenancy began sometime in January of 2011; that it ended on June 28, 2011; that the Tenant was required to pay monthly rent of $375.00; and she does not know how much of a security deposit was paid, although she speculates it was ½ of one month's rent.

The Tenant did not attend the hearing. The Tenant submitted an unsigned written submission that outlines a variety of deficiencies with the tenancy, which forms the basis of the Tenant's claims. The Witness for the Tenant stated that he was acting as legal counsel for the Tenant when this Application for Dispute Resolution was first filed

and that he recorded the aforementioned statement as it was related to him by the Tenant.

In his written submission the Tenant declared that he reported his concerns to the Landlord and was told the Landlord would not fix any of the problems. The Tenant declared that the rental unit had the following deficiencies:

- The rental unit was infested with mice/rats, which caused anxiety and sleeping problems
- The rental unit was infested with cockroaches which prevented him from eating properly as he could not keep food in the room
- The rental unit was infested with bedbugs and that he was bitten by the bedbugs every night
- There was black mould on the ceiling of the unit
- The toilet frequently did not work properly
- During the winter the hot water did not work on occasion, for periods of up to one week

The Tenant submitted an administrative report from the City of Vancouver which outlines 24 Building By-law deficiencies with the residential complex and 141 Standards of Maintenance By-law deficiencies with the residential complex. In relation to the allegations being made by the Tenant, the report specifically notes that the flooring is damaged in his rental unit, the ceiling light is not working in his rental unit, and the smoke alarm is not working in his rental unit. The report also declares that there is evidence of pest infestation (bedbugs, roaches, and rats) in many of the units and that the “entire basement and first floor are littered with rat feces and smell very sternly of rat urine”.

The Tenant submitted a letter from the City of Vancouver to the owner of the residential complex, dated March 01, 2011, which clearly outlines numerous deficiencies with the residential complex.

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 his written submission the Tenant declared that on June 07, 2011 he found a handwritten note under his door that said he must vacate the rental unit. He declared that when he returned home in the early morning hours of June 28, 2011 the desk clerk would not allow him onto the property; that he “snuck” into building; that the police attended his rental unit in the morning and told him the Landlord want him to leave; that he told the police he had paid his rent; and that the police did not require him to leave.

In his written submission that Tenant declared that he returned to the residential complex in the afternoon of June 28, 2011; that the staff would not let him into the residential complex; that an agent for the Landlord attempted to physically remove him from the residential complex; and that the police eventually escorted him into the rental

unit. He stated that he left his television and a mattress with a friend in the building and that he was left homeless.

Legal Counsel for the Tenant argued that the Tenant is entitled to aggravated damages as a result of the distress of being made homeless and the humiliation of being forced to leave his home.

The Tenant submitted a list of property, totalling $3,955.00. The document indicates that the property was lost either because the property was stolen after the Landlord broke the lock on his door and left it open; because it was damaged by pest/rodent infestation; or because it was disposed of without his consent. At the hearing Legal Counsel for the Tenant stated that the list of property represents items that were left in the rental unit when the Tenant was locked out of the rental unit. The Tenant is seeking compensation for the missing property.

In his written submission that Tenant declared that Landlord told him he must have his prescription filled at his clinic, but the Tenant refused to comply with the request. The Tenant declared that the Landlord told him the Landlord did not want "people who aren't in our program" to be "under our roof".

Analysis:

In the absence of documentary evidence or testimony from the Tenant, I find that I have insufficient evidence to determine how much of a security deposit was paid by the Tenant. Although most security deposits are ½ of one month's rent, I simply cannot speculate on the amount paid in relation to this tenancy. As the Tenant has failed to establish the amount of the security deposit that was paid, I dismiss the Tenant's claim for the return of the security deposit.

On the basis of the testimony of the Witness for the Tenant, I find it reasonable to rely on the unsigned written submission in which the Tenant describes a variety of deficiencies with the tenancy. In reaching this conclusion I was influenced, to some degree, by the fact that the Tenant was present at the hearing on September 27, 2011 and the written submission was considered during that hearing.

On the basis of the undisputed evidence, I accept the Tenant's declaration that there was an infestation of bedbugs, cockroaches, and rodents; that there was mould in the unit; that the toilet frequently did not work properly; and that the hot water sometimes did not work for extended periods of time. In reaching this conclusion I was heavily influenced by the administrative report from the City of Vancouver, which corroborates the allegations made by the Tenant.

On the basis of the undisputed evidence, I also accept the Tenant's declaration that he reported his concerns to the Landlord and that the Landlord would not repair the deficiencies. On the basis of this declaration and the letter from the City of Vancouver, dated March 01, 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 Tenant's written submission reduced the value of this tenancy by 20%, which is $75.00 per month. Specifically, the Tenant is being compensated for being without water and a properly functioning toilet for varying periods, for the mouldy ceiling, and for living with bedbugs, cockroaches, and rodents. I find that these are significant problems that directly impact the value of a rental unit. Pursuant to section 67 of the *Act,* I therefore award the Tenant compensation, in the amount of $450.00, for the six 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 accept that Tenant's declaration that he did not receive proper notice to end this tenancy and the Landlord prevented him from living in the rental unit after June 28, 2011.

I find that the Landlord breached section 30(1) of the *Act* when the Landlord prevented the Tenant from living in his rental unit after June 28, 2011. I accept the Tenant's argument that being unlawfully evicted and rendered homeless is extremely distressing and humiliating.

Residential Tenancy Branch Policy Guidelines suggest that aggravated damages must be "specifically sought". In these circumstances, the Tenant has claimed compensation of $20,000.00. 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 aggravated damages.

Aggravated damages may be awarded when there are non-pecuniary losses such as those experienced by the Tenant when he was unlawfully evicted. 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 my view, the Landlord's decision to prevent the Tenant from living in the rental unit was a willful disregard for the *Act* and to the Tenant's right to occupy the rental unit.

Compensation for aggravated damages is generally measured by the wronged person's "suffering", which is highly subjective. In the absence of a significant sample of amounts awarded to other tenants in similar circumstances, I find that I must rely on my own judgement in this matter. I find that the Tenant is entitled to compensation of $3,000.00 for the distress associated to an unlawful eviction, which I find is reasonable compensation for this distress.

In determining the amount of aggravated damages to award, I placed little weight on the decision of an arbitrator that was submitted in evidence, dated September 26, 2011, in which the arbitrator ordered the same Landlord to pay a different tenant $6,000.00 in aggravated damages. I am not bound to follow decisions of other arbitrators and, in the absence of other similar decisions, I am not convinced that this amount is typical of awards granted in similar circumstances. It is certainly a greater amount than I would normally award in such circumstances.

I specifically note that I have not awarded aggravated damages for deficiencies with the rental unit or for actions other than the unlawful eviction. In reaching this conclusion I was heavily influenced by the fact that the Tenant had the ability to end this tenancy and the ability to apply to the Residential Tenancy Branch to have most of 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 for deficiencies with the rental unit, as I have taken into consideration non-pecuniary losses in the awards that were based on the reduced value of the tenancy.

On the basis of the undisputed evidence, I find that some of the Tenant's property was lost or damaged during the tenancy. I find that the evidence regarding the property lost or damaged during this tenancy is inconsistent however, and it therefore unreliable. In reaching this conclusion, I was heavily influenced by the written submission of the Tenant, in which the Tenant declared that he left his television and his mattress with a "friend in the building" after the police escorted him into his rental unit on June 28, 2011. This is in direct conflict with the list of missing or damaged property that was submitted in evidence, in which the Tenant declared that his television and queen size bed were missing or damaged.

As I am unable to determine, with any degree of reliability, what property the Tenant lost during this tenancy, I dismiss the Tenant's claim for compensation for lost or damaged personal property. I do find that the Tenant is entitled to nominal damages for any property he was unable to recover as a result of being locked out of the rental unit, 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 Tenant for the loss of his property.

On the basis of the undisputed evidence, I find that the Landlord informed the Tenant he was not welcome in the residential complex if he did not fill his methadone prescription at the Landlord's clinic.

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. On the basis of the information provided to the Tenant, I find it reasonable for the Tenant to believe that his tenancy was in jeopardy because he was not filling his prescription and I find that to be a significant breach of his right to the quiet enjoyment of his rental unit. I therefore award the Tenant compensation of $187.50 for this breach, which is the equivalent of 5% of rent payable for the 6 month tenancy.

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 $3,638.50, which is comprised of $187.50 in compensation for the loss of quiet enjoyment, $3,000.00 in aggravated damages, $450.00 in compensation for deficiencies with the rental unit, and $1.00 in nominal damages. I therefore grant the Tenant a monetary Order for $3,638.50. 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 20, 2014

Residential Tenancy Branch