



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST REALTY GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RR MNDC OLC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- a) An Order that the landlord comply with the Act, eradicate pests, make emergency and other repairs and provide services and facilities required by law pursuant to sections 32 and 33;
- b) A Monetary Order for \$2,000 as compensation or refund of rent paid for loss of use of facilities and for when she could not live in the unit due to its unsafe condition, for repairs that were not done, for loss of her goods caused by the rat infestation and for her security deposit.

SERVICE

I accept that the landlord was properly served with the Application for Dispute Resolution hearing package and evidence. The landlord acknowledged receipt.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that the landlord through act or neglect did not fulfill his obligations under the Act to repair and to provide safe, sanitary housing to meet health standards and to eradicate pests? If so, has she proved that the landlord's act or neglect caused loss to her and her family? If so, what is the amount of compensation to which she has proved entitlement?

Should an order be issued to the landlord to make repairs?

Background and Evidence

The landlord attended the hearing. Both parties were given opportunity to be heard, to present evidence and to make submissions. A significant amount of oral and documentary evidence was presented, not all of it is quoted but that which is relevant to the decision is noted.

It is undisputed that the tenancy began on February 1, 2009, rent is \$800 a month, a security deposit of \$400 was paid and has not been refunded. The tenant said she has not yet provided her forwarding address to the landlord and was advised to do so as it is not on this application. It is undisputed that she vacated the unit on February 1, 2014 after providing short notice to the landlord; they agreed to accept the notice and that the

tenant would not have to pay February rent.

The tenant is claiming \$2000 as global compensation. She was unable to specify amounts for specific items but listed her problems. The most significant issue was the rat infestation which she states drove her out of the home in February 2014. She said there was an issue two years ago, the owner did not use an exterminator but filled some holes himself without disinfecting or cleaning and she found a large infestation in November 2013. The rats were chewing the electrical wires causing power outages; they had to buy bulbs and batteries totalling about \$40 due to the problems with the wires but they did not provide invoices.

The tenant also outlined the medical problems they have had which she claims are related to the rat infestation. The medical problems included asthma, hives, allergy reactions, urinary and yeast infections suffered by both herself and her children. Due to these medical issues, the tenants had to take the ferry to go to the island for testing because it was unknown what was causing the problems. The tenant said that when she told the doctor of the rat infestation, the doctor ordered her to get out of the situation immediately on January 10, 2014 (letter included). Included also in the evidence is a letter from a Health Authority noting a significant rodent problem on December 31, 2013 and expressing the opinion that the present state of the house allows easy access to rodents so the issue is worsening. The inspector notes on January 9, 2014 that he contacted the agent on December 31, 2013 but after no action by January 9, he contacted the owner directly and got assurances they would address the issue in the following week. He notes the presence of rodents can lead to health impacts on humans. The tenant also noted that her cat was bitten by a rodent and she paid \$339.79 for a vet bill (enclosed). The landlord pointed out that the bill does not specify it is related to a bite from a rodent. He also said that there was no medical evidence that the tenants' medical problems were caused by rats; he noted there are a lot of other allergies or illnesses that could have caused the problems.

The landlord also noted an inspection done on August 7, 2013 when they attended the premises regarding some other issues; he noted there was no mention of a rat problem then, the home was dirty, there were cat feces, there was an open compost bin at the side of the house and a bucket of some sweet potatoes. He noted the letter from the Health Authority advises against leaving waste or food around. The tenant said she was a good housekeeper, it was not cat feces but cat hairballs that the cat vomited up, there were only leaves in the compost bin, the bucket of garbage was only there because her 8 year old son had not told her he could not lift it but she usually took it to the dump every week. She said the other bucket outside had peels and 2 sweet potatoes that she discarded and it only sat a week before being taken to the dump.

In the global amount claimed is included an amount for the loss of use of the deck. The tenant said there were holes in the deck which made it unsafe and caused problems for entry into the home. She had to go outside and around to get anything off the deck and she could not allow her children to use it. The landlord said she still used it for her plants and there were 4 entrances to the home. A letter dated September 12, 2012 notes the

deck problems but they were not addressed until September 16, 2013. The tenant estimates she should receive a refund of \$150 a month for 2 years for the loss of use of the deck. The landlord said that the tenant had caused some of the rotting of the deck by putting plants on it which caused water to lie there.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

The onus is on the tenant as applicant to prove on a balance of probabilities that the landlord through act or neglect did not fulfill his obligations under the Act and that this caused her loss for which she claims compensation. The Act sets out the obligations of both tenants and landlords:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find the weight of the evidence is that this home is in an area that has had rat problems as noted by both landlord and tenant. I find the landlord addressed problems two years ago by filling in some holes although the tenant thought he should have also cleaned and disinfected. However, I find the evidence is that the issue of the rats appeared to be resolved so that it was not mentioned at an August 7, 2013 inspection. Although the female tenant said she was not there, I find it improbable that the male tenant would not have mentioned it if it was a significant issue. I find the landlord was notified again of a rat problem on November 30, 2013, a pest control person was contacted but he had problems getting traps because of ferry delay and fog; after three weeks, the tenant contacted the Health Authority who also noted the "significant rodent issue" which is worsening as the house allows "easy access to rodents". Although he contacted the landlord on December 31, 2013, the issue was still not addressed by January 10, 2014. I find the weight of the evidence is that the landlord's delay or neglect in addressing the problem in a timely way caused the tenant and her family problems for about one month; however, I also find the weight of the evidence is that the tenant was somewhat culpable herself as the evidence is that garbage and an uncovered compost bin and bucket were left outside for a period of time. According to the literature filed as evidence, this behaviour attracts rats and would violate the tenants' obligations under section 31(2). Considering the delay of the landlord in addressing the problem of rat

entry into the home and the tenants' contribution to the problems, I find the tenant entitled to a rebate of rent of \$400 for the partial loss of value of the tenancy for one month.

In respect to the tenants' claim for compensation for health issues caused by the rat infestation, I note that when one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. I find insufficient evidence to support the tenant's claim that the medical problems were caused by the rat infestation. As the landlord pointed out, although rats may be injurious to the health, many people suffer allergic and other problems in our climate and there is insufficient evidence that any of the problems of the tenant or her children were caused by the rat infestation. I also find insufficient evidence that the rat infestation was caused by an act or neglect of the landlord although his delay in addressing it worsened the tenants' problems. I also find insufficient evidence that the cat's medical bill was the result of a cat bite by a rat. Therefore, I dismiss this portion of the tenant's claim. Likewise, I find insufficient evidence that the landlord through act or neglect caused the tenant to lose other goods and I find no evidence of the cost of such goods; no invoices were provided. I dismiss this portion of the tenant's claim.

On the issue of the deck, I find the tenant notified the landlord of holes in the deck on September 12, 2012 but the landlord did not send anyone to quote to fix the problem until September 16, 2013. I find the tenant's evidence credible that she was concerned for the safety of her family so they could not use this deck that was rotting and had holes. Although the landlord contended that the tenant could still access the property through other entrances and that the tenant likely contributed to the problem by placing plants and water on the deck, I prefer the evidence of the tenant that this was an outdoor deck and plants would not have rotted it. I find the tenant lost the full use of the deck for over a year; although she put plants on it, she did not allow her children to play there due to concerns of safety issues. After notification of the problem in September 2012, the landlord should have been able to fix the problem within a month but neglected to do so. Her rent was \$800 a month and through losing the full use of the deck, I find her tenancy was devalued by \$50 a month for 14 months, from November 2012 (allowing a reasonable time to repair from formal notification) to January 2014. I find her entitled to a rent rebate totaling \$700.

In respect to the security deposit, the tenant has been advised to provide her forwarding address to the landlord in writing. This portion of her claim is dismissed with leave to reapply.

Conclusion:

I find the tenant entitled to a monetary order as calculated below. I dismiss the other claims of the tenant without leave to reapply. No filing fee is involved.

As the tenant has vacated and the landlord is undertaking repairs, I decline to issue an order for the landlord to repair the property.

Loss of value in tenancy due to landlord delay in addressing rat problem	400.00
Loss of value of the tenancy by losing the use of the deck for 14 months	700.00
Total Monetary Order to Tenant	1100.00

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

