Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR ERP RP MNDC FF

Introduction:
This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
b) An Order of Possession pursuant to sections 46 and 55; and
c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with **two applications** by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

d) To cancel a Notice to End Tenancy for unpaid rent;
e) An Order that the landlord make emergency and other repairs to the property and compensate the tenant for emergency repairs arranged and paid for by the tenant;
f) Compensation of $25,000 for problems suffered due to a major rat infestation; and
g) To recover the filing fee for this application.

SERVICE
The landlord and a male who spoke for the tenant whose authority and standing was clarified in the second hearing attended the hearing and each confirmed the Notice to End Tenancy dated January 6, 2014 was served personally on the tenant on January 6, 2014. The tenant filed her Application to cancel the Notice on January 13, 2013 and the landlord confirmed receipt of it by registered mail.

The tenant filed a second Application on February 17, 2014 and the landlord said he had received it on February 20, 2014 and did not have time to adequately respond to it by today's hearing. Some documents that the landlord said he filed with the Residential Tenancy Branch have also been misplaced according to him. The landlord served his Application and evidence by registered mail; it was confirmed online that the tenant was notified by the Postal Service but failed to pick up the documents and they were

returned to the sender landlord. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The male participant (tenant) said that he would try to make sure that documents requested through this hearing were picked up by them and said the address on the Application was correct for service.

In the hearing on March 11, 2014, both parties confirmed receipt of further documents and the Notice of the Adjourned Hearing date and time was received by all parties.

Issue(s) to be Decided:
Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession, a monetary order for rental arrears and to recover the filing fee for this application?

Or has the tenant demonstrated that the Notice to End Tenancy for unpaid rent should be set aside and that they are entitled to compensation for repairs and other losses and to recover filing fees for the application?

Second Hearing: Has the tenant proved on a balance of probabilities that the landlord through act or neglect caused them to suffer damages? Have they had significant interference with their reasonable enjoyment of their unit? If so, to what amount of compensation have they proved entitlement?

Preliminary Issues:
Time of Filing:
The tenant objected to my finding on my Interim Decision of February 27, 2014 that the tenant's Application had been filed late; he accused me of not knowing our Rules. In response, I note that in the definition section of the *Rules of Procedure,* it states that if the last day to file in an office falls on a weekend (as this Application did), then the document must be filed the previous day. However, I also note that section 25 of the *Interpretation Act* BC states that the time would be extended to the next day that is not a holiday. In this situation, whether or not the tenant is entitled to the beneficial construction of the *Interpretation Act* BC which would make her Application filed in time, I note this makes no essential difference to the Decision as the Order of Possession was not issued because the Application was out of time but primarily because the tenant had not paid rent contrary to sections 26 and 46 of the Act as noted on page 4 of the Decision.

Authorized Representation:

The male participant was the tenant's representative in this hearing also and he objected to my finding on my interim decision that he was not on the tenancy agreement and had not brought the applications. He said he was on the Application for Tenancy originally submitted to the landlord and also on the lease. I examined the evidence again and he is not on the lease and did not bring the Applications for Dispute Resolution. However, he is named on the Application for Tenancy and the landlord named him in his Application for Dispute Resolution and appears to accept his tenancy. Today the tenant confirmed his standing to represent her. He provided all the oral evidence today and I will refer to him as the tenant in this hearing.

Adjournment:

Partway through the hearing today, the tenant requested a further adjournment for two weeks to obtain a copy of a second Pest Control Company Report who apparently attended the premises on March 6, 2014. The landlord strongly objected and said the tenant had the opportunity to submit any documents before the hearing and the landlord would suffer significant prejudice if this hearing was again adjourned; the tenant has already been living there for three months and paying no rent. The Rules of Procedure 6.4 state:

Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

a)the oral or written submissions of the parties;

b)whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];

c)whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

d)the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

e) the possible prejudice to each party.

I refuse to adjourn this matter further as it was pointed out on February 27, 2014 and confirmed in my Decision of that date that the hearing today would be mandatory; also the Report of the first Pest Control Company dated January 8, 2014 is in evidence as requested by the tenant in the previous hearing; he neglected to file the second report which he said he signed on March 6, 2014 and which I doubt would contribute significant new evidence.. I find it significantly prejudices the landlord to grant further adjournments as the tenant is already three months in arrears of rent and has stated he intends to appeal every decision which will delay the enforcement of the Order of Possession further.

Background and Evidence:

This is a reconvened hearing which is mainly to consider the second Application filed by the tenant on February 17, 2014 requesting $25,000 in compensation but it is also to deal with a monetary order for outstanding rent from January to March 2014. Both parties in the original hearing had not received some documents and agreed to the adjournment. The tenant particularly wanted me to order a copy of an unedited Pest Control Company Report dated January 8, 2014 to be released to him and this was done. I advised both parties that the hearing on March 11 at 10:30 a.m. would be mandatory and would proceed whether or not they chose to pick up documents served legally.

In this hearing, the tenant had to be reminded twice not to interrupt and he was granted at least 60 minutes of the 70 minutes hearing time to present his evidence. He demanded that the landlord's manager, J., come to the telephone to answer some questions, and when he answered, the tenant objected that I had not sworn or affirmed his evidence. At that point, I stopped and asked the manager to swear that the evidence he gave was true and asked him if he needed to change any statement he had previously made but he said it was all true.

The tenant said that all communication with the landlord had mainly been by text to and from the manager, J. He said they noted the problems early with the radiator where

they believe the rats gained entry and on December 21, 2013, the landlord supplied poison which created a terrible smell as the rats died. He said he notified J. regarding the treatment of Kilz paint for the rat smell and gave the landlord over a month to do something but he was told on February 1, 2014 by J. that the landlord would do nothing more. He said that the heat and rodent smell are related and they cannot open any of their windows or door since they don't have screens. He said the heat is excessive and they don't have any control over the thermostat as it is controlled from upstairs.

To try to address the problem, they boxed in the heater; he said this is an emergency repair for it relates to the heating. He said they want to stay in the unit as they like the location and neighbours, the documents of the landlord are evasive or fraudulent, the manager has trouble with his eyesight so doesn't see the problems, the City can tell me the unit is not safe and their $25000 claim is based on the lots of work that is required to make the unit safe. He noted they had to use ionizers and hepa filters to help with the smell and the kilz paint was needed to do this too. He noted some other issues with the unit and said that he was thinking of putting a fire exit from his son's bedroom. He said they as tenants had suffered a lot of stress but they are not claiming for this. He said he is opting to go to Civil litigation to claim for all their damages but he did not say he was discontinuing this process so the hearing continued.

The landlord said they seek an amendment to their application for a further month's rent is due because of the adjournment and they wish to add this to their application. I grant the amendment to add $2100 to the landlord's claim for outstanding rent as the adjournment was largely necessary to hear the tenant's second application for $25,000 which was joined to the landlord's and tenant's original files.

The landlord said that the tenant had not obtained approval for any of the work he has allegedly done and that none of it would be classified as emergency repairs. He asked me to refer to the relevant dates set out in their written statement as the hearing was somewhat difficult with interruptions, allegations of falsehood and accusatory remarks. He said that the tenant wanted to move into the unit early in October although the landlord was still renovating and planned to finish by November. He said that since move-in, the landlord has acted expeditiously on any problem drawn to his attention by the tenants. He notes the tenant complaint of silverfish on October 23, 2013 and the Pest Control treatment on October 25, 2013 as invoiced. On December 19, 2013, there is the first record of the tenants complaint of the rat problem, the manager bought rat poisons and traps on December 22, 2013 and gave them to the tenant but the tenants said they were not working a few days later; then the manager, J., sealed off one small hole in the exterior. On Dec. 31, 2013, the tenants texted J. to not deposit rent for January.

The landlord said on January 6, 2014 the tenants called and wanted to remove the radiator and meet about the rat problem. The landlord's representatives attended and advised they would call a pest control specialist but rent has to be paid and they served a 10 day Notice to End Tenancy. On January 6, 2014, the landlord contacted some Pest Control companies and advised the tenant of two companies; he chose the one that could come first. On January 8, 2014 a Pest Control Company attended and addressed the problems by sealing off access holes around most of the exterior except one side covered with vines. The landlords went to pay the company, the tenant became aggressive and Police had to be called. The landlord noted that they denied permission to the Roofing Co. which they believe is the tenant's friend to deal with the rat access points as they already hired a specialist to do this. A Roofing Company letter dated January 10, 2014 is in evidence. .

On February 14, 2014, the landlords got a letter from the City of Vancouver dated February 7, 2014 regarding the pest issue and other deficiencies. They required the landlord to submit a pest control plan by March 7, 2014 (later amended to April 2014). The landlord arranged to have a second pest control company attend on March 6, 2014.

I reviewed all the evidence to date. In evidence is the Notice to End Tenancy for unpaid rent, the Residential Tenancy Agreement, an Application to Rent, registered mail receipts, photographs of the home, bank drafts from different branches of the Bank of Montreal dated in January or February 2014 (most of them from February 7th on) and made out in ink to a person who has the same last name as the disputing tenant who attended. The hand written notations on the bottom of them are all for painting except one for $350 that says "Haz/Mat Cleanup" which is also made out to the male with the same last name. No business name or receipt for the work is in evidence. (I note the tenant said the Bank will be engaging in accusations against us in regard to these remarks which have simply described what I saw in evidence). In evidence is also a letter from the City dated February 7, 2014 advising the landlord he is in contravention of the Standards of Maintenance Bylaw and noting he is to obtain services of a Pest Control Company and submit a copy of the contract and pest control plan to their attention by March 7, 2014. A number of other deficiencies were noted. Photographs of deficiencies were in evidence. The advocate said that the landlord had been given an extension to April, 2014 to comply and a letter from the City is enclosed verifying this. A letter from a roofing company dated January 10, 2014 noted rodent problems and said the tenant told them that they were denied permission to do these repairs as the landlord would not give permission. Various text messages are copied in evidence, some of them undated. No photographs of rats are in evidence, although the landlord requests them in a text message to aid the exterminators.

Further evidence from the landlord shows a Pest Control Receipt for $183.75 paid for treatment of silverfish around the perimeter of the suite on October 25, 2013 and a Westside Pest Control receipt for treatment of rats dated January 8, 2014 for $630. The job notes state that various entry points were noted around the home and sealed with wire mesh except for the south west side which was covered with vines. They said they also set traps throughout the unit.

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

Analysis

Recording of Hearing:

I find that section 9.1 of the *Rules of Procedure* expressly prohibits the private recording of the dispute resolution proceeding. The tenant again tried to argue this point.

On his file, the landlord applied for an Order of Possession and a Monetary Order. On the tenant's first file, she requested that the Notice to End Tenancy should be set aside and some repairs done. Whether or not the tenant was out of time to file her Application, as stated in my interim decision, I found the landlord entitled to an Order of Possession pursuant to sections 46 and 55; there is unpaid rent and I find the weight of the evidence is that under section 26 of the Act, the tenant had no right to withhold rent. I found it would be unfair and prejudicial to the landlord to withhold an Order of Possession until the monetary hearing today on March 11, 2014 as the tenant already owes two months of rent. Furthermore, the delay in proceeding is partially a result of the tenant failing to pick up her registered mail when notified by the Post Office. An Order of Possession is issued to the landlord effective two days from service.

As stated on the interim decision, although the tenant contended a decision should not be made on an Order of Possession because of the rat infestation problem, I find that section 26 of the Act states that a tenant must pay rent when due whether or not the landlord complies with the Act unless the tenant has a right under the Act to deduct part of the rent. I find no right under the Act for the tenant to withhold her rent; I find the receipts submitted by her are mostly for painting which is not defined in section 33 of the Act as an emergency repair. In the hearing today, the tenant contended the boxing in of the heater was an emergency repair for it was to do with the heat. I find boxing in a heater to prevent excess heat or to block access of rats is not defined as an emergency repair in section 33 of the Act. Furthermore, I find insufficient evidence that the tenant took the steps described in subsections 33 (3) and (5) before boxing in the heater.

Monetary Order:
The onus is on each applicant to prove on a balance of probabilities their claim. I find the weight of the evidence is that there is outstanding rent from January to March 2014 ($2100 x 3) for a total of $6,300 as amended. The tenant agreed he had not paid rent for these months. I find the landlord entitled to a monetary order for $6300 and to recover his filing fee for this application.

On the tenant's application, the onus is on the tenant to prove on a balance of probabilities that the landlord through act or neglect caused their problems and that they are entitled to compensation. Section 7 of the Act states:

> *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

Section 32 of the Act sets out obligations of the parties:

> ***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.*

To obtain monetary compensation for losses suffered, this test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the tenancy agreement or the Act
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

On their claims, I find the tenant has not shown that the landlord was negligent or that the landlord's negligence or non-compliance with the Act resulted in a loss. I find the weight of the evidence is that the tenant first notified the landlord of a rat problem on December 19, 2013, the landlord tried to address it with rat poison and traps given to

the tenant and when the tenants complained they were not working, the landlord tried to inspect the suite but was refused entry. However, he tried to seal up one exterior hole with cement; he was not sent a picture of a rat which the tenant's son allegedly took and which he hoped would aid exterminators in identifying the treatment needed. On January 6, 2014, the landlord obtained services of a Pest Control specialist who attended on January 8, 2014 and worked on the problem charging $630 but could not access one wall due to heavy vine growth. I find the Police were called when problems between the tenant and landlord escalated and the landlord was told not to have contact with the tenant except in presence of Police. I note the City letter said on January 16, 2014 that the unit was infested with rats. When the City letter was received, the landlord arranged to have another pest control company attend on March 6, 2014 to treat again and prepare a pest control plan. I find the landlord's response as evidenced in email and oral testimony shows he was responding in a diligent manner to resolve the problem.

I find insufficient evidence that the tenants asked for or received permission to box in the heater or to paint the unit. The tenants complained of the smell and said it was caused by the heat and rotting rats and it had to be addressed by a box around the heater and also by painting to kill the smell but they provided no inspection or professional reports to verify this and none of the Reports or the letter from the City mentioned the problems of smell and treatment. . I find that when the Roofing Company attended, the landlord had already hired a professional pest control company to attend to the problem and the landlord was within his legal rights to deny permission to hire a friend of the tenant. In the letter from the City dated February 7, 2014 the inspector noted that on January 16, 2014 the unit was infested with rats but although he noted other deficiencies, the inspector did not note a rotting smell of rats or a heating problem and did not note that the unit had to be painted with Kilz or have a heater boxed in. Furthermore, the bank drafts submitted by the tenant as evidence and noted above are not made out to a professional company, there are no independent invoices for the work performed, they are for painting which is not defined as an emergency repair and the evidence is that the tenant did not have the landlord's permission to do the work. Therefore, I find the tenant not entitled to recover these amounts and dismiss this portion of their claim.

Although I find that the landlord did not through act or neglect cause the problems of the tenant, I find the weight of the evidence is that the tenants' peaceful enjoyment of their unit has been significantly impacted by the rat problem apparently through no fault of theirs. While the evidence is that the landlord has been addressing the problem in a pro-active way since December 19, 2013, the weight of the evidence is that this is an older home and there was an infestation of pests contrary to the City Bylaw and it persisted to January 16, 2013 and is still ongoing, according to the evidence of the tenant..

I find the tenancy has been devalued through the ongoing rat problem which may be partly the result of the first pest control company being unable to access one wall due to overgrown vines. The monthly rent of the unit is $2100 for the approximately 1500 sq.

ft. unit. While the family had a place to live and enjoy, (according to the tenants' evidence), I find the value of the tenancy has been decreased by the ongoing fear and dirt of rats and associated stress. I find it reasonable to find that the value of the tenancy has been decreased by one third due to these problems so I find the tenants entitled to a rent rebate of $700 a month or $2100 from December 19, 2013 to March 18, 2014.

Conclusion:

The tenancy is at an end. An Order of Possession was issued to the landlord effective two days from service. I dismissed the first Application of the tenant on file #A without leave to reapply.

I find the landlord entitled to a monetary order as calculated below and to recover filing fees for this application.

On her Application on file #B, I find the tenant entitled to a rebate of rent of $2100 and to recover a portion of her filing fee. I find the claim of $25,000 was excessive so she is entitled to half her filing fee for her partial success.

Outstanding rent to landlord (3x$2100)	6300.00
Filing fee	50.00
Less rent rebate to tenant (3x$700)	-2100.00
Less half of filing fee to tenant	-50.00
Total Monetary Order to Landlord	4200.00

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: March 11, 2014

Residential Tenancy Branch