Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Domain Land Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, RP, and FF

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 a monetary Order for the cost of emergency repairs; for the return of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Tenant withdrew the application to recover the security deposit.

The female Tenant stated that the Application for Dispute Resolution was sent to the Landlord, via registered mail, on January 23, 2014. The Agent for the Landlord acknowledged receiving these documents.

The Tenant submitted documents the Tenant wishes to rely upon as evidence to the Residential Tenancy Branch on February 26, 2014. The female Tenant stated that these documents were served to the Landlord, via registered mail, on February 25, 2014.

The Agent for the Landlord stated that his wife did receive a package of documents from the Tenant on February 27, 2014. He stated that he does not have those documents with him nor has he had a chance to view those documents, as he has been out of town since those documents were delivered.

The Agent for the Landlord requested an adjournment for the purposes of providing him with the opportunity to review the Tenant's evidence. The male Tenant opposed the request for an adjournment as he believes the Tenant served their evidence in accordance with the Rules of Procedure.

Rule 3.4 of the Residential Tenancy Branch Rules of Procedure stipulates that to the extent possible, the applicant must file copies of all available documents, photographs, video or audio evidence at the same time as the Application for Dispute Resolution is filed. I find that the Tenant did not comply with rule 3.4, as the photographs and many of the documents submitted to the Residential Tenancy Branch on February 26, 2014

could have been submitted when the Application for Dispute Resolution was filed on January 19, 2014.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence that could not be filed with the Application for Dispute Resolution, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least five days before the dispute resolution proceeding.

I find that the Tenant did not comply with the obligation to serve the Tenant's evidence to the Landlord "as soon as possible". In reaching this conclusion I was heavily influenced by the fact that the majority of the evidence submitted was, or should have been, available to the Tenant by the end of January of 2014, yet it was not mailed to the Landlord until February 25, 2014.

As the Landlord acknowledged that the Tenant's evidence was delivered to his mailing address on February 27, 2014, I find that the evidence was served in accordance with the timelines established by the Rules of Procedure for a hearing that was scheduled for March 05, 2014. I therefore accepted the Tenant's evidence for these proceedings.

The Landlord's request for an adjournment was granted as the Landlord has not yet had the opportunity to view and consider the Tenant's evidence. In my view, the adjournment is necessary to provide the Landlord with a fair opportunity to review and consider the Tenant's evidence, given that the Agent for the Landlord has not yet seen the documents served by the Tenant.

Although the Tenant's evidence was served within the timelines established by the Rules of Procedure, I specifically note that the Landlord did not receive <u>any</u> evidence until 6 days before the hearing, yet the Tenant filed this Application for Dispute Resolution on January 19, 2014. As the delay in serving the evidence was largely unnecessary and the delay placed the Landlord at a significant disadvantage, I determined that an adjournment was reasonable and appropriate.

The Landlord submitted documents the Landlord wishes to rely upon as evidence to the Residential Tenancy Branch on February 17, 2014. The Agent for the Landlord stated that these documents were served to the Tenant, via registered mail, on February 15, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted documents the Landlord wishes to rely upon as evidence to the Residential Tenancy Branch on February 26, 2014. The Agent for the Landlord stated that these documents were served to the Tenant, via registered mail, on February 26, 2014. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted documents the Landlord wishes to rely upon as evidence to the Residential Tenancy Branch on March 24, 2014. The Landlord did not attend the hearing on May 14, 2014 to explain how these documents were served to the Tenant, however the Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Prior to adjourning the hearing on March 05, 2014 the parties were given the opportunity to provide oral evidence regarding the basic terms of the tenancy agreement and the issue in dispute.

The Landlord did not attend the reconvened hearing on May 14, 2014 and the hearing proceeded in the absence of the Landlord. At the reconvened hearing the Tenant was provided with the opportunity to present relevant oral evidence and to make relevant submissions to me.

Issue(s) to be Decided:

Is the Tenant entitled to the cost of emergency repairs; to compensation for vacating the rental unit; and for a rent refund for deficiencies with the rental unit?

Background and Evidence:

At the original hearing the Landlord and the Tenant agree that they entered into a fixed term tenancy agreement, the fixed term of which began on January 01, 2014 and was to end on December 31, 2016. The parties agree that the monthly rent for this tenancy was $2,050.00, although it was inadvertently recorded on the tenancy agreement as $1,025.00.

At the original hearing the female Tenant stated that on January 14, 2014 she was vacuuming in her baby's bedroom and that when she picked up something from the floor beside an electrical outlet sparks flew out of the electrical outlet. The Tenant submitted photographs of the damaged outlet and areas on the carpet that were burned by the malfunction.

At the original hearing the Landlord and the Tenant agree that the incident was reported to the Agent for the Landlord's wife, by telephone, on January 14, 2014. The parties agree that the Agent for the Landlord's wife attended the rental unit that evening and inspected the damage, at which time she told the Tenant that her husband would investigate the problem when he returned in approximately two weeks.

At the original hearing the male Tenant stated that they were concerned about the safety of the outlet, given that it was in their child's bedroom, and they did not want to wait two weeks to have the matter investigated/repaired. He stated that they hired an electrician to investigate the problem and that the outlet was repaired on January 15, 2014.

The Tenant submitted a letter from the electrician who repaired the outlet, in which he declared that a receptacle had "spontaneously arced" and was "physically disintegrated to the point of failure". He concluded that the situation was a "safety emergency" as he observed numerous other electrical deficiencies. The Tenant submitted an invoice, dated January 17, 2014, which shows the outlet was repaired for $147.53. At the original hearing the male Tenant stated that this invoice was paid by the Tenant and they are seeking to recover the cost of this repair.

The male Tenant stated that the invoice was not provided to the Landlord until the Landlord was served with evidence for these proceedings. At this point the hearing was adjourned to provide the Landlord with the opportunity to consider the Tenant's evidence.

After the hearing was adjourned the Landlord submitted an affidavit from the Agent for the landlord's son, dated March 20, 2014, in which he declared that he viewed the damaged receptacle on January 14, 2014, at which time he noted that one of the two outlets was "blackened". He further declared that the photograph of the damaged receptacle submitted in evidence by the Tenant is not a photograph of the receptacle he viewed on January 14, 2014.

At the reconvened hearing the male Tenant stated that after the faulty receptacle was repaired they continued to have concerns about the electrical safety of the rental unit. He stated that those concerns were based on the information provided to him by the electrician, who told him there were a variety of electrical deficiencies. In the letter dated January 21, 2014, the electrician concluded that the situation was a "safety emergency". He stated that the Tenant opted to vacate the rental unit on January 31, 2014, in part, because of those concerns.

The Tenant submitted a copy of an Electrical Inspection Certificate for the rental unit, dated February 04, 2014 and a letter from a bylaw officer from North Vancouver, dated February 05, 2014. In the letter the bylaw officer declares that the rental unit was inspected on February 04, 2014 at which time "unsafe wiring deficiencies" were found "throughout the house". The letter directs the property owner to have a licences electrical contractor address the deficiencies noted in the Electrical Certificate of Inspection and that "until compliance is met the tenanted property cannot be occupied".

The Landlord submitted a letter from an electrical company, dated February 25, 2014, in which the president of the company declared that the items identified by the electrical inspector have been repaired and they have fixed any problems that were deemed an "electrical hazard".

The Landlord submitted a letter, dated February 13, 2014, in which he declared that when he spoke with the electrician who repaired the receptacle for the Tenant, he was advised that the receptacle was "blackened"' that it "blew up in his face" when he was repairing it; and that the receptacle had no ground wire.

The male Tenant stated that after this tenancy agreement was signed the Agent for the Landlord's wife told them there had been a problem with rodents, which would be rectified before they moved into the rental unit. He stated that when they moved into the rental unit there was a strong odour, which he speculates was caused by rat feces or dead carcasses. He stated that the odour was immediately reported to the Landlord.

The female Tenant stated that the Landlord had an exterminator attend the rental unit about one week after it was reported. She stated that the exterminator told her he had previously rectified the problem and she did not observe him take corrective action.

In the letter from the bylaw officer, dated February 05, 2014, the bylaw officer noted that there was evidence of rodent activity, including feces and "odours throughout the house".

The Landlord submitted documentary evidence to show that a pest control company worked in the rental unit in 2013 and 2014. The Landlord submitted a letter from the company in which the Tenant declared that there were "at most" two rats in the unit, which have been "eliminated".

The male Tenant stated that when they moved into the rental unit the Landlord gave the Tenant permission to paint the rental unit and that the Landlord promised to compensate the Tenant for the cost of paint supplies. The Tenant submitted no evidence to corroborate this testimony.

In a written submission, dated February 13, 2014, the owner of the rental unit stated that the Tenant painted the rental unit without authorization. He stated that the Tenant knew the condition of the paint at the start of the tenancy. He stated that the Tenant only painted "a small portion of the house" and that the rest of the house "looked fine to me".

The Tenant is seeking compensation for moving costs. The male Tenant stated that they intended this to be a long term tenancy and that they did not anticipate incurring moving costs so shortly after moving into the rental unit. The Tenant contends that they should be entitled to compensation for the cost of moving because their decision to move was based on deficiencies with the rental unit.

Analysis:

Section 33(1(a) of the *Residential Tenancy Act (Act)* defines an emergency repair as a repair that is urgent. Section 33(1)(b) of the *Act* defines an emergency repair as a repair that is necessary for the health or safety of anyone or for the preservation or use of residential property. Section 33(1(c)(v) of the *Act* defines an emergency repair as a repair that is made for the purpose of repairing the electrical system.

On the basis of the undisputed evidence, I find that an electrical receptacle in one of the bedrooms malfunctioned. I find that the repair to the bedroom outlet is an emergency

repair as defined by the legislation. In my view, electricity spontaneously arcing out of an electrical outlet poses a significant safety hazard and is a problem that should be immediately investigated and, if necessary, repaired.

In determining this matter I placed little weight on the affidavit dated March 20, 2014. Even if I accepted the declaration that the photograph submitted in evidence by the Tenant is not a photograph of the damaged receptacle, there is no dispute that there was a malfunction. I find the letter provided by the electrician, who declared that the receptacle "spontaneously arced" and was "physically disintegrated to the point of failure" is sufficient to establish the nature of the malfunction and that there is no need for me to view of photograph of the damaged receptacle.

Section 33(3)(a) of the *Act* stipulates that a tenant may make emergency repairs only when the repairs are needed. Given that the outlet was a potential safety hazard and was located in a child's bedroom, I find that the outlet needed to be repaired to ensure electricity did not spontaneously arc out of the outlet again.

Section 33(3)(b) of the *Act* stipulates that a tenant may make emergency repairs only after the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs. I find the Tenant exceeded the requirements of this section when the Tenant informed the Agent for the Landlord's wife by telephone on one occasion and then spoke with her personally about their concern. I note that the Agent for the Landlord was not available and she was acting on his behalf in regards to this tenancy.

Section 33(3)(c) of the *Act* stipulates that a tenant may make emergency repairs only after the tenant has given the landlord reasonable time to make the repairs. Given the risks of delaying this repair, I find it reasonable that the Tenant proceeded with the repairs after being told that the Landlord would not be responding to their concerns for approximately 2 weeks. I find that delay, in these circumstances, to be unreasonable.

Section 33(5) of the *Act* stipulates that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. I find that the Landlord has been provided with an invoice and a written account of the outlet repair. On the basis of the testimony of the male Tenant, I find that this invoice has been paid by the Tenant and I therefore find that the Landlord must pay the Tenant $147.53 for the cost of this repair.

On the basis of the information provided to the Tenant by the electrician who repaired the receptacle that had malfunctioned, I find it was reasonable for the Tenant to be concerned about the condition of the wiring in the rental unit. Specifically, I find it was reasonable to be concerned because the electrician declared the situation a "safety emergency".

In determining this matter I was influenced by the letter from the bylaw office, dated

February 05, 2014. Although this letter could not have contributed to the Tenant's decision to vacate the rental unit on January 31, 2014, it does validate the concerns of the electrician and, therefore, the concerns of the Tenant. I specifically note that the inspector found unsafe wiring deficiencies throughout the house and concluded that the house could not be tenanted until the deficiencies had been addressed.

Section 28 of the *Act* entitles a tenant to the quiet enjoyment of the rental unit. In my view, the Tenant's concerns about the wiring in the rental unit significantly interfered with their enjoyment of the rental unit between the date of the malfunction on January 14, 2014 and when they vacated the rental unit on January 31, 2014. Determining compensation for loss of quiet enjoyment is highly subjective, however in these circumstances I find that compensation of $410.00 is reasonable, which is 20% of the monthly rent. Had the Tenant's been concerned about the electrical safety of the rental unit for the entire month, I would have granted compensation of 40%.

This award for loss of quiet enjoyment for this concern is significant, in part, because concerns about electrical safety are taken seriously by many reasonable people, and could cause significant safety concerns. In my view the Landlord should have taken immediate steps to repair the damaged receptacle and to address any identified serious electrical deficiencies with the rental unit, which would have likely alleviated the concerns of the Tenant.

On the basis of the undisputed evidence, I find that there has been a rodent problem in this rental unit and that the Landlord took reasonable steps to rectify that problem prior to the start of the tenancy. On the basis of the undisputed evidence, I find that there was an odour in the residential unit for the first month of the tenancy. I find it reasonable to conclude, on the basis of the letter from the bylaw officer, that the odour was related to the previous rodent problem.

In my view, living with an odour that is related to a previous rodent problem interfered with the Tenant's enjoyment of the rental unit for the first month of the tenancy. I find that compensation of $205.00 is reasonable, which is 10% of the monthly rent.

A Tenant is only entitled to repairs made to a rental unit if the repairs are made in accordance with section 33 of the *Act* (emergency repairs) or the Landlord agrees to compensate the Tenant for the repairs. I find that the Tenant has submitted insufficient evidence to establish that the Landlord agreed to pay the Tenant for materials used to paint the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that the Landlord agreed to compensate the Tenant for painting or that refutes the Landlord's written declaration that the Tenant did not have permission to paint. I therefore dismiss the Tenant's claim for painting the rental unit.

I find that the Landlord acted reasonably and responsibly when the Landlord hired an electrician to ensure the rental unit was safe for habitation, although it is unclear to me when the remedial work was completed. On the basis of the letter from the electrical

company, dated February 25, 2014, I am satisfied the work was completed by February 25, 2014. Given that the Landlord remedied any known safety concerns in the rental unit within a reasonable period of time, thereby alleviating reasonable concerns for safety, I find that it was not "necessary" for the Tenant to vacate the rental unit as a result of the electrical concerns.

I find that the Landlord acted reasonably and responsibly when the Landlord hired a pest control company to eliminate a rodent problem in the rental unit. Although I accept that there may have been an odour as a result of those attempts, I find it reasonable to conclude that the odour was likely the result of a decaying carcass of a relatively small animal the odour, which would have disappeared in a reasonably short period of time.

In the event that the odour did not dissipate in a reasonable amount of time, I find that the Landlord has demonstrated a willingness to remedy deficiencies with the rental unit and that it would therefore be reasonable to conclude that this issue would have been resolved. I therefore find that it was not "necessary" for the Tenant to vacate the rental unit as a result of the odour.

As I am not satisfied that it was necessary for the Tenant to vacate the rental unit, I dismiss the Tenant's claim for compensation for moving costs.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to compensation for the cost of filing this Application.

Conclusion:

The Tenant has established a monetary claim of $812.53, which is comprised of $147.53 for emergency repairs**,** $615.00 for loss of the quiet enjoyment of the rental unit, and $50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. 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: May 19, 2014

Residential Tenancy Branch