



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL MNDC RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the "Act") seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to cancel a notice to end tenancy for landlord's use of the rental property, and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

On July 7, 2015, the hearing commenced and was adjourned after 56 minutes in order to provide more time to hear evidence. On July 7, 2015, an Interim Decision was issued which should be read in conjunction with this Decision. On October 28, 2015 the hearing was reconvened and concluded after an additional 71 minutes.

The tenant, and the landlord who is also the owner of the property, attended both dates of the hearing and gave affirmed testimony. During the first portion of the hearing on July 7, 2015, an agent for the landlord (the "agent"), C.T., attended. Agent C.T. did not attend the reconvened portion of the hearing on October 28, 2015.

The testimony and evidence of the parties who attended the hearing is summarized below and includes only that which is relevant to the matters before me.

Based on the testimony of the parties, I am satisfied that both the landlord and tenant received the documentary evidence from the other party prior to the hearing and had the opportunity to review that evidence prior to the hearing.

Preliminary and Procedural Matters

As mentioned in my Interim Decision dated July 7, 2015, the tenant has withdrawn her application to cancel the 2 Month Notice issued by the landlord as the tenant made the decision to vacate the rental unit on June 30, 2015. As a result, I have not considered the tenant's original request to cancel the 2 Month Notice dated May 20, 2015.

During the hearing, even after the tenant withdrew item #4 of her claim, heating costs, the landlord requested to have that portion of the tenant's claim considered. The landlord's request was denied as I find that by withdrawing that portion of her application, there was no need to consider that portion of her claim further as it would be moot.

Issue to be Decided

- Is the tenant entitled to a monetary order under the Act, and if so, in what amount?

Background and Evidence

The parties agreed that a fixed-term tenancy began on April 1, 2009 and reverted to a month to month tenancy after April 1, 2010. The parties agreed that while a written tenancy agreement was made, it was not submitted in evidence. The parties agreed that initially, monthly rent was \$860 per month and due on the first day of each month. The parties agreed that by the end of the tenancy, the rent had been increased through several rent increases to \$966 per month. The parties agreed that the tenant paid a security deposit of \$430 at the start of the tenancy.

The tenant's monetary claim of \$5,255 is comprised as follows:

| | |
|---|----------------------------------|
| Item 1. Bathtub faucet not being fixed or addressed for over three months since the landlord was ordered to repair the faucet (calculated at \$335 per month X 3 months) | \$1,005 |
| Item 2. Transition pieces not being installed for over 17 months, and 3 months past due since the repair order was made. (calculated at \$500 total for the first 13 months, and \$350 per month for the 3 months past due since the repair order was made) | \$1,550 |
| Item 3. Carpets not being cleaned or replaced since the repair orders were made by an Arbitrator (calculated at \$500 per month for the 3 months the landlord has not complied with the orders of the Arbitrator) | \$1,500 |
| Item 4. Reimbursement of heating costs due to a broken window frame not being addressed or fixed in any way for a total of \$200 | \$200 (withdrawn during hearing) |
| Item 5. Compensation for time and stress involved in filing another Application against the landlord, despite the existence of a repair order, including loss of wages – Seeking \$1,000 with no calculation provided. | \$1,000 |
| TOTAL | \$5,255 |

For ease of reference, I will refer to the each portion of the tenant's claim by item number as described above.

Evidence regarding Item 1

Regarding item 1, the tenant is claiming \$1,005 due to the landlord not replacing the bathtub faucet that the tenant claims he was ordered to repair in the March 4, 2015 Decision, the file number of which is provided on the front page of this Decision for ease of reference. The tenant indicates that the amount of \$1,005 was calculated by taking the amount of \$335 and multiplying that by 3 months, as the tenant stated that the landlord was ordered to replace the faucet by February 28, 2015.

The landlord's response to this portion of the claim was while he did not replace the faucet, he did change the internal cartridges. The tenant stated that he was ordered to replace and repair the faucet, neither of which the landlord did as the faucet continued to leak until she vacated the rental unit on June 30, 2015.

The landlord provided the analogy of a car engine and that if a car engine was not working, you would replace the spark plugs and not the entire engine.

The tenant testified that there was one bathtub/shower combination in the rental unit, and that while the shower still worked, there was limited use of the bathtub due to spraying and leaking water from the faucet area. The landlord testified that the water pressure varied in the rental unit and that it was not broken enough for compensation as it did not provide a hindrance for the tenant or result in burns. The tenant replied that while she was not claiming for burns caused by the hot water that was spraying at times, it did prevent her from using the faucet as much as she would have liked "if it had been replaced as the landlord was ordered to do by February 28, 2015."

The Decision dated March 4, 2015, indicates that the property manager stated that the Landlord committed to making some of the repairs requested such as "replacing the faucet" and the arbitrator wrote that "should these repairs not be completed by February 28, 2015, the Tenant shall be at liberty to apply for further related Orders".

Evidence regarding Item 2

Regarding item 2, the tenant is claiming for compensation for the first 13 months where the landlord did not install transition pieces for the first 13 months of the tenancy and for the 3 months past due since the repair order was made which the tenant calculated at \$500 total for the first 13 months, and \$350 per month for the 3 months past due since the repair order was made for a grand total of \$1,550.

I note that in the March 4, 2015 Decision, the Arbitrator has already granted the tenant compensation in the amount of \$500 for the transition pieces not being repaired for the first 13 months. Regarding the remainder of the claim calculated at \$350 per month for 3 months, the Decision dated March 4, 2015, indicates that the property manager stated that the Landlord committed to making some of the repairs requested such as "installing transition pieces" and the arbitrator wrote that "should these repairs not be completed by February 28, 2015, the Tenant shall be at liberty to apply for further related Orders".

The landlord testified that he had no time to install the transition pieces by February 28, 2015 and three months after, on May 28, 2015, he sent the tenant an email regarding the transition pieces. In addition, the landlord claims he called the tenant with no success but was unable to provide any specific dates of any of the phone calls to the tenant.

The parties agreed that the landlord did attend on February 10, 2015 and repaired the baseboards, and that the baseboards were not part of the tenants claim. The landlord stated that on February 10, 2015, he measured for the transition pieces but needed to colour match the pieces.

Evidence regarding Item 3

Regarding item 3, the tenant is claiming for compensation in the amount of \$500 for each of the three months after the landlord failed to clean or repair the carpets as ordered in the March 4, 2015 Decision for a total of \$1,500.

Regarding the carpet, the March 4, 2015 Decision the arbitrator writes:

“...Accordingly, I Order that the Landlord, within four weeks of the date of this Order, retain the services of professional carpet cleaners to clean the carpet in the rental unit with the intent of restoring the carpets to the Tenant’s satisfaction. Should the carpets remain stained and damaged after such a restoration attempt, I Order that the Landlord replace the carpets. The Tenant is at liberty to apply for further Orders should the Landlord not comply...”

[reproduced as written]

The landlord had no specific dates to provide regarding his attempts in relation to the carpet cleaning; however, the parties do agree that in June 2015, the landlord sent an email to the tenant and that the tenant was not interested in the carpets being cleaned at that point as she had already given notice to vacate the rental unit by June 30, 2015.

Evidence regarding Item 4

This portion of the tenant’s claim was withdrawn by the tenant during the hearing. As a result, I did not consider this portion of the tenant’s claim as a result.

Evidence regarding Item 5

The tenant testified that she was claiming for \$1,000 in compensation due to the time and stress involved including loss of wages related to filing another application against the landlord. This portion of the tenant’s claim was dismissed during hearing as the *Act* does not provide a remedy for compensation related to the alleged time and stress related to filing an Application for Dispute Resolution.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

In this instance, the burden of proof is on the tenant to prove the merits of her monetary claim against the landlord.

Item 1 – The tenant has claimed \$1,005 for the 3 months after the tenant claims the landlord was ordered to replace or repair the bathroom faucet. The tenant stated that she assigned a value of \$335 for each of the three months due to the landlord not complying with the order. I find there was no such order as claimed by the tenant; however, the landlord did agree to replace the faucet as noted in the Decision dated March 4, 2015. I also note that the landlord did not apply to Review the March 4, 2015, and as a result, that Decision stands in full force and effect. The arbitrator wrote that “should these repairs not be completed by February 28, 2015, the Tenant shall be at liberty to apply for further related Orders”. As a result I do not accept that tenant’s claim that the landlord had been ordered to replace the faucet, nor do I find that the tenant has provided insufficient evidence that she suffered a loss worth \$335 of the value of the \$966 rent per month for three months as that amount would equal 35% of the amount of the monthly rent.

I find that the landlord did not comply with his agreement to replace the bathroom faucet as noted in the March 4, 2015 Decision, and as a result, I find the tenant did suffer some loss in the value of the tenancy

and therefore, I grant the tenant a nominal amount of **\$10** per month for the decreased value to the tenancy by not having the faucet replaced. I do not accept that replacing the cartridges was a sufficient repair by the landlord. As the repair was to be completed by February 28, 2015, I find the \$10 amount applies to the four months of March, April, May and June of 2015 for a total of **\$40** for this portion of the tenant's claim.

Item 2 – For this portion of the tenant's claim, the tenant is seeking compensation for the first 13 months where the landlord did not install transition pieces for the first 13 months of the tenancy and for the 3 months past due since the repair order was made which the tenant calculated at \$500 total for the first 13 months, and \$350 per month for the 3 months past due since the repair order was made for a grand total of \$1,550.

As noted above, the arbitrator has already granted the tenant compensation in the amount of \$500 for the transition pieces not being repaired for the first 13 months as noted in the March 4, 2015 decision. As a result, I dismiss that portion of the tenant's claim under the legal principal of *res judicata* as I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim. With respect to *res judicata*, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

I also note that increasing the amount of an earlier claim that has already been decided upon does not make that claim a new claim. Regarding the remainder of this portion of the tenant's claim calculated at \$350 per month for 3 months, the Decision dated March 4, 2015, indicates that the property manager stated that the Landlord committed to making some of the repairs requested such as “installing transition pieces” and the arbitrator wrote that “should these repairs not be completed by February 28, 2015, the Tenant shall be at liberty to apply for further related Orders”. As a result I do not accept that tenant's claim that the landlord had been ordered to replace the transition pieces nor do I find that the tenant has provided insufficient evidence that she suffered a loss worth \$350 of the value of the \$966 rent per month for three months as that amount would equal 36% of the amount of the monthly rent. I find the landlord's testimony regarding attempts to contact the tenant to be vague and afford it no weight as a result.

I find that the landlord did not comply with his agreement to replace the transition pieces as noted in the March 4, 2015 Decision, and as a result, I find the tenant suffered some loss in the value of the tenancy and I grant the tenant a nominal amount of **\$5** per month for the decreased value of the tenancy by not having the transition pieces replaced. As the repair was to be completed by February 28, 2015, I find the \$5 amount applies to the four months of March, April, May and June of 2015 for a total of **\$20** for this portion of the tenant's claim. I find the landlord's testimony regarding attempts to contact the tenant to be vague and afford it no weight as a result.

Item 3 – The tenant is claiming for compensation in the amount of \$500 for each of the three months after the landlord failed to clean or repair the carpets as ordered in the March 4, 2015 Decision for a total of \$1,500. While I find the landlord failed to comply with the order of the arbitrator by April 4, 2015, I also find that for the month of June 2015, when the tenant advised the landlord that she was vacating on June 30, 2015 and at that point refused the landlord access to address the carpets, that the tenant is not entitled to any amount for June based on her own actions of refusing access to the landlord for June 2015. Furthermore, I find that the tenant has provided insufficient evidence that she suffered a loss worth \$500 of the value of the \$966 rent per month for each of the three months as that amount would equal 52% of the amount of the monthly rent of \$966. I find the landlord's testimony regarding attempts to contact the tenant for the months of April and May to be vague and afford it no weight as a result.

I find that due to the landlord not comply with an order directing him to either clean or replace the carpets in the rental unit by April 4, 2015 as indicated in the March 4, 2015 Decision, I find the tenant did suffer some loss in the value of the tenancy and I grant the tenant a nominal amount of **\$10** per month for the decreased value of the tenancy by not having the carpets cleaned or replaced as ordered. As the cleaning or replacement of the carpets was to take place by April 4, 2015, I find the \$10 amount applies to the two months of April, and May of 2015 for a total of **\$20**. For the month of June 2015, that portion of the tenant's claim is dismissed as the tenant refused access by the landlord to address the carpets by that point as the tenant had decided to vacate the rental unit as of June 30, 2015. I find the testimony of the landlord regarding the months of March, April and May to be vague and I am affording it no weight as a result.

Item 4 - This item was withdrawn during the hearing by the applicant tenant. As a result, it was not considered further as a result as doing so would be moot.

Item 5 - This portion of the tenant's claim was dismissed during the hearing as there is no remedy under the *Act* as claimed by the tenant.

I CAUTION the landlord that in the future, should he refuse to comply with an order of an arbitrator or to complete repairs as agreed upon during a dispute resolution hearing, he could face administrative penalties under the *Act* that carry with it monetary penalties up to and including \$5,000 for each day the contravention or failure continues.

I find that the tenant has established a total monetary claim of **\$80** comprised of \$40 for item 1, \$20 for item 2, and \$20 for item 3. I grant the tenant a monetary order pursuant to section 67 of the *Act* in the amount of \$80.

Conclusion

A majority of the tenant's claim is not successful. The tenant has established a total monetary claim comprised of \$80 of her original \$5,255 monetary claim. The tenant has been granted a monetary order

pursuant to section 67 of the *Act* in the amount of \$80. The tenant must serve the landlord with the monetary order and may file the order in the Provincial Court (Small Claims) to be enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 9, 2015

Residential Tenancy Branch

