



## Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

**File No: 810909**

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Tenant(s),

Applicant(s)

And

**Bentall Kennedy (Canada) LP, Landlord(s),**

Respondent(s)

Regarding a rental unit at: s.22 1371 Blackwood Street, White Rock, BC

Date of Hearing: September 20, 2013, by conference call.

Date of Decision: October 11, 2013

Attending:

For the Landlord: Candace Le Roux, landlord's agent

For the Tenant:

s.22

### Background and Evidence

The undisputed evidence of the parties was that this tenancy began on June 1, 2012, monthly rent is \$1310, and the tenant paid a security deposit of \$655 at the beginning of the tenancy.

In addition to a request for orders for the landlord, the tenant's application filed August 5, 2013, contained a monetary claim in the amount of \$4900, with the tenant having supplied no breakdown of the claim as required by section 59(2)(b) of the Act.

When asked to explain how s.22 came up with the figure of \$4900, the tenant explained that a claim of over \$5000 would result in a higher filing fee.

The tenant submitted an extensive amount of documentary evidence, which included a binder containing a detailed reference to each point of the issues contained in s.22 application with an explanation as to how the landlord had violated the Act, photographs in support of s.22 contention that the landlord had deprived s.22 of s.22 rights to quiet enjoyment and had failed to make necessary repairs or comply with the Act, written communication between the parties, condition inspection reports, and tenancy agreements.

#### *Emergency repairs and repairs-*

In support of s.22 application, the tenant presented that since the very beginning of the tenancy, s.22 has experienced a backflow into s.22 bathtub, the repair for which has not been addressed by the landlord. The backflow was described as water shooting up into the tenant's bathtub, leaving black dirt resulting in a health hazard.

The tenant said that s.22 initially notified the landlord in writing on August 31, 2012, suggesting that the backflow came from a washing machine or dishwasher used in one of the rental units in the apartment building, which is not allowed, and that the landlord continued to ignore the repair.

The tenant said that all s.22 initial contacts with the landlord were with another agent of the property manager company, who was succeeded in July 2013, by the agent attending this hearing.

The tenant further contended that the water supply has been contaminated, due to the backflow, and unsafe to consume.

The tenant also contended that s.22 is subject to smoking, which is not allowed in the tenancy agreement.

Due to these issues, the tenant argued that s.22 does not have the use of s.22 balcony.

The tenant questioned the safety of the water supply, as s.22 humidifier ceased working. The tenant said s.22 took the humidifier to a water company, and was informed that the backflow could cause contamination in the pipes.

In response, the landlord explained that the tenant's rental unit in the multi-level apartment building is an end unit, with a garage underneath. The landlord contended that although the tenant's tenancy agreement prohibits car washing, other tenants are able to wash their cars as their rights were "grandfathered" by earlier tenancy agreements. The landlord said that the garage where garbage is collected unfortunately is underneath the tenant's rental unit, and that due this is the only place on the property on which garbage trucks may collect the garbage.

The landlord submitted that the residential property is not designated as non-smoking.

The landlord said she called the water company and was informed that no problems with the water supply have been noted.

The landlord submitted that the tenant has been offered another rental unit on the premises, away from the garbage collection and car wash area, and has refused to move.

### Analysis

While I have not mentioned specifically each piece of documentary evidence submitted by the tenant, I have thoroughly reviewed and considered the tenant's evidence.

Based on the relevant oral and written evidence, and on the civil standard of a balance of probabilities, I find as follows:

### *Emergency repairs and repairs-*

Section 32 of the Act provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

*Compensation for loss of quiet enjoyment-*

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I dismiss the tenant's request for compensation for an alleged lack of quiet enjoyment.

In making this decision, I find the tenant failed to minimize s.22 claimed loss as s.22 waited 14 months after the tenancy and the issue with the backflow began to make an application for dispute resolution, when filing such an application immediately after the claimed problem arose would be a reasonable measure to substantially reduce a claim. I therefore find the tenant has not complied with section 7(2) of the Act.

I also find that the tenant provided no specific details as to the elements of s.22 request for \$4900, other than s.22 preferred to not pay an additional filing fee, and I was therefore unable to conclude if any compensation was justified.

I was also persuaded by the landlord's efforts in assisting the tenant in securing another accommodation in the residential property so that s.22 would not be impacted by garbage collection, car washing, or furnace/heater noise, with the tenant's subsequent refusal. I also find I cannot order that the landlord to prevent car washing from the area below the tenant's rental unit or from smoking as I was not presented evidence that these other tenants are restricted by the tenancy agreement from washing cars on the premises or smoking in their rental units.

I was not persuaded that the landlord had violated the Act, as this particular unit was situationally located in the area of the garbage collection and car washing, which was viewed by the tenant at the beginning of the tenancy. I would expect that the tenant would take advantage of the landlord's offer to relocate within the residential property so that s.22 would not be bothered by these noises.



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
*Fact Sheet RTB-103: Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
*Fact Sheet RTB-108: Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
*Fact Sheet RTB-111: Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
*Fact Sheet RTB-141: Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
*Fact Sheet RTB-100: Review Consideration of a Decision or Order (Please Note: Legislated deadlines apply)*

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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Residential Tenancy Branch

#RTB-136 (2011/07)



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### **DECISION ON REQUEST FOR CORRECTION**

The applicant has requested a correction to a decision of the Residential Tenancy Branch dated October 11, 2013.

Section 78 of Residential Tenancy Act enables the Residential Tenancy Branch to:

- correct typographic, grammatical, arithmetic or other similar errors in a decision or order, or
- deal with an obvious error or inadvertent omission in a decision or order.

The applicant requests the decision to be reviewed and corrected.

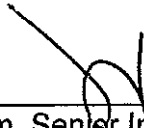
The applicant submitted, along with a 1 page covering and a copy of the decision, 7 pages in writing to support the request and stated that "the Arbitrator wiggled and twisted the evidence"... and "some glaring errors were made in this decision...".

I have reviewed the submissions of the applicant and find that the submissions are not in relation to any of the above corrections provided under section 78 of the Act. I find that the submissions are arguments and recitation of evidence that challenge the findings of the case by the arbitrator. As a result, I dismiss the application.

The original decision and order stand.

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.

Correction Date: November 7, 2013



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J. Lam, Senior Information Officer  
Residential Tenancy Branch