DECISION

Dispute Codes OLC, RP, PSF, RR

Introduction

This matter dealt with an application by the Tenant for an Order that the Landlord make repairs to the rental property and provide services or facilities that were agreed to or that are required by law. The Tenant also applied for a rent reduction until repairs are made or services and facilities are restored.

Issues(s) to be Decided

1. Are repairs necessary?
2. Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy started approximately 10 years ago. Rent is $500.00 per month. The Tenant claimed that in January 2009 the Landlord removed a wheel chair ramp from the rental property and has failed or refused to replace it despite a previous order (in other proceedings) from the Residential Tenancy Branch made on May 27, 2009 to do so. The Tenant said that in order to exit the rental property from her 1st floor suite, she must climb 5 steps.

The Tenant said she relied on the wheel chair ramp because she is currently dependent on a wheel chair and walker. The Tenant who is 80 years of age said she had hip replacement surgery in January 2010 and recently had knee replacement surgery. The Tenant said whenever she wants to leave the rental property she has to find someone to carry her walker or wheel chair for her while she climbs the steps. Consequently, the Tenant sought compensation for the loss of this service or facility and a rent rebate until such time as it is replaced.

The Tenant also claimed that she sent the Landlord a letter dated November 11, 2009 by registered mail listing a number of repairs that were needed to her rental unit. In particular, the Tenant said a kitchen drawer is falling apart and a light fixture has not been secured to the ceiling. Since sending the letter, the Tenant said a leak in the ceiling resulted in a stain and a dent. The Tenant said these repairs have not been made and she sought an order to have them made.

The Landlord claimed that he received a “comprehensive permit” from the City of Kamloops to make repairs to the rental property pursuant to an Order of the Fire Department in November of 2008. The Landlord said that the wheel chair ramp fell under this comprehensive permit but he did not provide a copy of the permit. The Landlord also said that modification plans for the ramp were drawn up by an engineer and approved by the City, however when an inspection of it was done in January 2009,

the Landlord said he was verbally advised to remove the ramp and not replace it. The Landlord said he was not told by the City Inspector why he had to remove the ramp and could not replace it. The Landlord also claimed that the City of Kamloops did not give him written confirmation of any of these matters.

The Landlord admitted that it would be possible to install a wheel chair lift by the entrance but argued that he has spent already spent a lot of money on renovations at the rental property and that it was unreasonable to expect him to accommodate each tenants' needs in the rental property. The Landlord also argued that the amount of compensation and rent rebate sought by the Tenant was unreasonable.

The Landlord denied that he received a letter from the Tenant asking for repairs to be made to her rental unit. The Landlord said the Tenant should have brought these matters to the new, on-site manager who is responsible for dealing with general repairs.

Analysis

Section 32(1) of the Act says that "a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and that having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 27(1) of the Act says that "a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement." Section 27(2) of the Act says that "a landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility."

"Service or facility" is defined under s. 1 of the Act and includes such things as parking, storage, utilities and elevators. It is important to note that the definition sets out a list of things that are ***included*** and therefore it is not an exhaustive list. In other words, what is a service or facility is not limited to those items set out in the list but rather a service or facility includes other things that "are provided or agreed to be provided by the landlord to the tenant of a rental unit."

I find that a wheel chair ramp was agreed by the Landlord to be provided to the Tenant. I find that in November 2008, the Landlord was required by an Order of the Kamloops Fire Department to either modify or remove the existing wheel chair ramp. I find that there is no reliable evidence to corroborate the Landlord's claim that in January 2009 he was required by a City Inspector to remove a modified ramp with no reasons for that Order. I also find that in another Residential Tenancy Hearing held on May 27, 2009, the Landlord was ordered to replace the wheelchair ramp but has failed or refused to do so to date. Consequently, I find that the Tenant is entitled to compensation for a loss of

that facility and to a rent rebate until such time as it is replaced or a wheel chair lift is installed.

I find that the amount of compensation claimed by the Tenant in the amount of $500.00 per month *for the loss of a service or facility* is unreasonable. The Tenant admitted that while the loss of the ramp has made it very difficult for her to leave the rental property, she has not lost the full use of her rental unit as living accommodations and as a result, I find that she is entitled to compensation of $100.00 per month for the period May 2009 to May 2010 (13 months) for a total of $1,300.00. I order pursuant to s. 65(1) of the Act that the Tenant may deduct this amount from her next rent payments when they are due and payable to the Landlord.

I also order pursuant to s. 65(1) of the Act that commencing June 1, 2010, the Tenant may deduct a further $100.00 per month for that month and for each full or part month thereafter until a fully functioning wheel chair ramp or wheel chair lift is installed in the rental property. For example, ***until a new ramp is installed***, the Tenant will be entitled to reduce her rent payments as follows:

June 1, 2010:	Rent reduction:	$100.00
	Compensation Award	$400.00
	Rent due:	$0.00
July 1, 2010:	Rent reduction:	$100.00
	Compensation Award:	$400.00
	Rent due:	$0.00
August 1, 2010:	Rent reduction:	$100.00
	Compensation Award:	$400.00
	Rent due:	$0.00
September 1, 2010:	Rent reduction:	$100.00
	Compensation Award:	$100.00
	Rent due:	$300.00

The period of time for which compensation is payable or rent should be reduced for the loss of a service or facility is not dependent on the Tenant's use of that service or facility. In other words, the service or facility that was removed was and continues to be included in the rent. Consequently, even though the Tenant claimed that she might be sufficiently rehabilitated in 3 months time to be able to climb the stairs without the use of a walker or wheel chair, I find that the ramp is a service or facility to which she is entitled (and for which she has been paying) whether she uses it or not.

Although the Advocate for the Tenant also argued for a punitive damage award, such damages are not available under the Act; instead, aggravated damages are available. RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> "These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."

As no claim was made for aggravated damages and as there was insufficient evidence that the lack of a wheel chair ramp was a breach of health, safety and housing standards required by law, I decline to make an award in this case.

I also order the Landlord pursuant to s. 32 and 62(3) of the Act to make repairs to the Tenant's kitchen drawer, a light fixture and a water damaged ceiling/wall area no later than June 15, 2010.

Conclusion

The Landlord is ordered to make repairs to the rental unit as set above. The Tenant is also entitled to compensation in the amount of $1,300.00 for the loss of a service and facility and to a rent reduction of $100.00 per month commencing June 1, 2010 until that service or facility is restored in the rental property.

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 17, 2010.

Dispute Resolution Officer