DECISION

Dispute Codes RP, LRE, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make repairs to the unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant testified that he gave the landlord a copy of his dispute resolution hearing package on January 7, 2011. The landlord confirmed receiving this package. I am satisfied that the tenant served his dispute resolution hearing package to the landlord in accordance with the *Act*.

Both parties confirmed receiving one another's evidence packages prior to the hearing. However, as the hearing proceeded, I learned that the Residential Tenancy Branch had only received three pages of the tenant's evidence. Although the tenant entered oral testimony regarding his written evidence, the tenant agreed to submit another copy of his entire evidence package to the Residential Tenancy Branch after the hearing. I issue my decision now that I have received all of the tenant's written evidence, evidence already in the landlord's possession at the time of this hearing.

Issues(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit? Is the tenant entitled to an order allowing him to reduce rent for repairs, services or facilities agreed upon but not provided? Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the tenant's rental unit? Is the tenant entitled to recover his filing fee for this application from the landlord?

Background and Evidence

This fixed term tenancy commenced on December 1, 2007. The tenant's current renewal of this fixed term tenancy ends on June 30, 2011. Monthly rent is set at $2,200.00, payable on the first of each month. The landlord continues to hold the tenant's $1,100.00 pet damage and $1,100.00 security deposits.

The tenant applied for an order requiring the landlord to make repairs to a window, floors and appliances. The tenant also applied for an Order requiring that any additional

inspection of his rental unit be delayed until 30 days after the landlord's repairs are completed. Once that occurs, the tenant committed to have his suite professionally cleaned as requested by the landlord and to have any damaged doors in his rental suite replaced. The tenant did not apply for a monetary Order nor did he identify any monetary amount in his application form for a monetary Order. However, he stated the following in his application:

> *…in the event the landlord does not make the changes as requested, I request a rebate on the $2,200.00 per month rent going back to the start of the tenancy. I think a 10% rebate would be reasonable…*

The landlords and their property manager provided undisputed written and oral evidence that the window and floor issues noted in the tenant's application were identified as damaged when the tenant first occupied this suite. On this point, they referred to the following notations on the joint move-in condition inspection report dated December 1, 2007.

> *Hardwood flooring against east wall of living room has spacing in it.*
> *Hardwood flooring has noticeable grooves along front of balcony doors and hardwood flooring has scratches about 4 feet from east living room wall…*
> *One glass panel has crack in it to be fixed by developer (master bedroom).*

They testified that these items remain an issue between strata owners in their building and the developer of the property. They said that the strata council has discussed launching a class action suit against the developer to resolve this problem.

The landlords said that they were unaware that most of the tenant's appliances were malfunctioning until after they requested an inspection of the rental unit on November 15, 2010. The following day, the tenant notified them that the refrigerator, the dishwasher, the stove range, the range hood fan and the microwave all needed repair. Some of these repairs have required major expenditures from the landlord.

The landlords testified that they retained an appliance repair company to inspect these appliances. They submitted undisputed written and oral evidence that the refrigerator repairs were completed on November 30, 2010. They received advice that the parts for the stove and dishwasher would have to be ordered and that the high-end microwave would need to be replaced as it could not be repaired. They testified that they decided to order parts for the stove and dishwasher on December 15, 2010. They purchased and offered the tenant a smaller microwave on December 16, 2010, but the tenant did not want this replacement so they returned it. They have subsequently ordered a new high-end microwave similar to that which was previously in the tenant's suite.

The landlords have completed repairs on all of the appliances but for the dishwasher. The parts for the dishwasher are on order and were supposed to be ready in another week at which time the landlords plan to have the dishwasher repaired. The landlords said that the new microwave should also be available shortly.

The landlords testified that the appliance company told them that many of the appliance problems result from the lack of cleanliness in the rental suite. They said that the appliance company told them that the stove malfunctioned because of the "grease, grime and dog hair" that had interfered with the "motherboard" controlling this appliance. They provided photographic evidence of what they described as a poor state of cleanliness in the rental suite, which they maintain has led to the requirement for repairs to appliances that were new or nearly new when the tenant moved in three years ago.

Analysis

Application for Landlord to Make Repairs to Rental Unit

The parties agree that some of the items on the tenant's requested repair list (i.e., the crack in a window pane, scratches and marks on flooring in the rental unit) were damaged when the tenant first occupied this rental unit. The landlords testified that they are still attempting to obtain these repairs from the builder/developer. The second type of repairs the tenant has requested involve features of the rental unit, predominantly appliances supplied by the landlord, which have malfunctioned during the course of this tenancy. The landlord has completed most of these repairs and plans to complete the remainder of these repairs shortly.

Repairs to Items Listed in Joint Move-in Condition Inspection Report

I first turn my attention to the first category of repairs the tenant is seeking, those items listed in the joint move-in condition inspection report. From the joint move-in condition inspection report, it seems clear that the landlord intends to repair the window crack and committed to do so in the move-in inspection report. No equivalent commitment was made in the move-in condition inspection report notation on the condition of the floors.

I can appreciate why the landlords prefer to connect the repair of these items with the claims of other strata owners in the complex. However, this does not lessen the landlords' responsibility to provide services and facilities that the tenant reasonably expected to receive when the parties entered into their residential tenancy agreement. The tenant has asked for an order requiring the landlords to repair the items listed in his application. If these items were not repaired immediately, the tenant requested a retroactive rebate in his rent dating from the start of his tenancy. These included the crack in the window, scratches on the floors and the repair of the appliances.

The tenant testified that the breakdown in all of the appliances occurred shortly before the landlords requested an inspection of his rental unit in November 2010. As such, any rebate I might consider for lack of use of the appliances would be limited to the time period after he provided notice to the landlords. The request for repairs and a retroactive rebate for loss of facilities such as the crack in the window and scratches on the floors date back to the commencement of this tenancy. During the hearing, the tenant was asked to describe the effect of the landlord's failure to repair these items. He said that there has been a loss in "aesthetics" resulting from the landlords' failure to repair items that were supposed to be repaired according to the terms of the original tenancy agreement. He added that the high monthly rent that he pays should entitle him to a pleasing aesthetic rental unit.

I agree that a portion of the tenant's $2,200.00 in monthly rent is for aesthetically pleasing rental premises. However, I also need to consider the facts surrounding this tenancy and the efforts taken by the tenant to let the landlord know that he was dissatisfied with the lack of repairs to the window and the damage to the floor. The landlords questioned the extent to which the tenant was genuine in his concern about these deficiencies in the rental unit. They noted that the window had a small crack that did not affect the integrity of the seal on the window and was covered by blinds. They also questioned why the tenant had signed repeated renewals of his fixed term tenancy without mentioning or noting any concern about these items.

The tenant testified that he had raised concerns about the lack of repairs to the window, the floors, a kitchen cabinet unit and the refrigerator to the landlords' previous agent who was looking after this rental unit. He cited an email received from that agent in May 2008 and entered his summary of this email into written evidence. The tenant said that he called their agent in late 2008 or early 2009, but had few details regarding the timing or content of that conversation. The landlords questioned the credibility of the tenant's summary of emails. The landlords said they were never aware of any concerns registered by the tenant about the lack of repairs to these items until they submitted a written request to conduct an inspection of the tenant's rental unit.

In considering this matter, I attach little weight to the tenant's summaries of the contents of emails. I am not satisfied that the tenant's provisions of his own summaries of emails meets the burden of proving that he notified the landlord that he wanted the items noted in the original condition inspection report repaired. The landlords testified that clause 8(b) of the Residential Tenancy Agreement establishes that "The Tenant shall promptly report to the Landlord any damage, unsafe condition, fault or deficiency in services..." This clause also makes the tenant responsible for repair damage to the premises caused by a wilful or negligent act or omission of the Tenant.

The landlords submitted documents regarding an inspection conducted on November 25, 2010. That inspection led to a written Caution Notice to the tenant on December 17, 2010 that included the following comments:

***Date of Occurrence**: Ongoing* ***Incident**: dirty unit/ cracked closet door*
We are concerned with the lack of cleanliness/hygiene in the unit. Please have the unit professionally cleaned and we will be back to inspect on January 7th, 2011 at 11:00 am. Please also have the cracked/broken closet doors repaired or replaced by then, as well as any other damage to the unit...

In this Notice, the landlords advised the tenant that they would issue a notice to end tenancy should there be any further incident or circumstances warranting termination of his tenancy.

The landlords and their property manager also entered oral testimony regarding the poor condition of the rental unit. The female landlord and the property manager testified that the appliance repair company told them that damage to a number of the appliances resulted from a lack of proper cleaning and care by the tenant. They also provided photographic evidence to reinforce their claim that the tenant has failed to take proper care of the rental unit and the appliances, which they said were new or almost new when he moved into this unit in December 2007.

Based on the evidence before me, I find that the tenant has not demonstrated to the extent necessary that he is entitled to any retroactive reduction in rent from the commencement of his tenancy for the landlord's failure to conduct repairs to the window and the scratches on the floor. He has not provided sufficient credible evidence that he alerted the landlord that he wanted these repairs conducted. He continued to sign new tenancy renewals without putting into writing any concerns that he had about these items. I also find little basis for him to claim that he is entitled to a monetary award for loss of aesthetics in his rental unit when the evidence indicates that he has shown little regard to such aesthetics in his own care for the rental unit.

However, I also recognize that as of early January 2011, the tenant has alerted the landlord that he is concerned that the landlord has not repaired items that the landlords committed to fix at the beginning of this tenancy. Notwithstanding the landlords' desire to include his claim for repairs with those of the remainder of this strata complex, the tenant should not have to wait while issues of liability between the landlords and the builder/developer are resolved.

I order the landlords to repair the crack in the tenant's window that the landlords' representative committed to repair in the joint move-in condition inspection report. If that does not occur by March 1, 2011, I order the tenant to reduce his monthly rent by $10.00 per month until that repair is completed. This reduction in monthly rent reflects the tenant's loss of a service or facility that was to have been included in his rent when he signed the Residential Tenancy Agreement.

Based on the tenant's maintenance of the rental unit and the insufficiency of evidence presented by the tenant to substantiate his claim in this regard, I make no equivalent order or reduction in rent for scratches and damage to the floor of the rental unit. Although this damage was noted in the move-in inspection report, there is insufficient evidence to show that the landlord made a commitment to undertake these repairs.

Repairs to Appliances

I accept the landlord's oral and written evidence of repairs either already completed or scheduled for the appliances in the rental unit. The landlords and their property manager testified that the dishwasher parts have been ordered and are expected to be received before the end of January, at which time the repairs to the dishwasher will be completed. The landlord also testified that the replacement microwave oven has also been ordered and is expected shortly.

I order the landlords to complete the repairs to the dishwasher in the rental unit by February 11, 2011. If the repair to the dishwasher has not been completed by that date, I order the tenant to reduce his next monthly rental payment by $25.00 for a loss of services and facilities for the remainder of the month of February 2011. If the repairs to the dishwasher have not been completed by February 28, 2011, I order the tenant to reduce his scheduled monthly rental payments by $50.00 for each successive month until such time as these repairs have been completed. Once the repairs to the dishwasher have been completed, this monthly rent reduction is eliminated.

I order the landlords to replace the microwave oven by February 11, 2011. If the microwave oven has not been replaced by that date, I order the tenant to reduce his next monthly rental payment by $10.00 for a loss of services and facilities for the remainder of the month of February 2011. If the microwave oven has not been replaced by February 28, 2011, I order the tenant to reduce his scheduled monthly rental payments by $20.00 until such time as the microwave has been replaced. Once the microwave has been replaced, this monthly rent reduction is eliminated.

I accept the tenant's testimony that he did experience delays in obtaining repairs to some of the appliances that he asked the landlord to repair on November 16, 2010. I

also accept the landlord needed some time to assess how best to proceed with the tenant's request to repair almost all of the appliances in this rental unit except for the washer and dryer. However, I find that the tenant is entitled to a one-time reduction in rent of $100.00 for his loss of services and facilities while he awaited decisions from the landlord and repairs to these appliances. I order the tenant to reduce his next monthly rent payment by $100.00 to reflect his loss of services and facilities following his November 2010 notice to the landlord that these repairs were necessary. This is a one-time only rent reduction and has no effect on the tenant's responsibility to pay rent in succeeding months.

Application to Suspend or Set Conditions on Landlord's Right to Enter Rental Unit

I do not accept the tenant's claim that the landlord's right to inspect his rental unit or require compliance with the landlord's requests to maintain the rental unit in accordance with their residential tenancy agreement should be linked to the landlord's repair of the rental unit. I find that these are two separate and distinct issues. The landlord is entitled to enforce rights in accordance with the residential tenancy agreement.

I find no merit to the tenant's application that the landlord's right to enter the rental unit should be suspended or that conditions should be set on the landlord's right to enter the rental unit. I dismiss the tenant's application for an Order suspending or setting conditions on the landlord's right to enter the rental unit.

Filing Fee

I make no order regarding the tenants' request to recover his filing fee for this application.

Conclusion

I order the landlords to repair the crack in the window of this rental unit that was cited for repair in the joint move-in condition inspection report by March 1, 2011. If this repair is not completed by that date, I order the tenant to reduce his monthly rent by $10.00 per month, until such time as that repair has been completed.

I order the landlords to repair the dishwasher in this rental unit by February 11, 2011. If this repair is not completed by that date, I order the tenant to reduce his next monthly rent payment by $25.00. If this repair is not completed by February 28, 2011, I order the tenant to reduce his March 2011 rent by an additional $50.00. If the dishwasher repairs have not been completed by March 31, 2011, I order the tenant to reduce his scheduled monthly rental payment for April 2011 and all successive months by $50.00 until such time as the dishwasher repairs are completed.

I order the landlords to replace the microwave in this rental unit by February 11, 2011. If this replacement has not been undertaken by that date, I order the tenant to reduce his next monthly rent payment by $10.00. If this microwave replacement has not been undertaken by February 28, 2011, I order the tenant to reduce his March 2011 rent by an additional $20.00. If the microwave replacement has not been undertaken by March 31, 2011, I order the tenant to reduce his scheduled monthly rental payment for April 2011 and all successive months by $20.00 unit such time as the microwave has been replaced.

I order the tenant to reduce his next monthly rent payment by $100.00 to reflect his loss of services and facilities following his November 2010 notice to the landlord that these repairs were necessary. This is a one-time only rent reduction and has no effect on the tenant's responsibility to pay rent in succeeding months.

I dismiss all of the tenant's other requests for repairs.

I dismiss the tenant's application for an Order suspending or setting conditions on the landlord's right to enter the rental unit without leave to reapply.

I dismiss the tenant's application to recover his filing fee for this application.

This decision and the orders contained therein are made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.