



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Tiffany Centre & Argentis Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord make repairs and comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The hearing was conducted via teleconference and was attended by the tenants and the landlord.

During the hearing both parties made reference to a previous decision from an Application for Dispute Resolution by the tenants that resulted in a settlement agreement dated February 12, 2010 and despite neither party providing a copy of the decision they agreed to allow me to consider the decision. I have done so.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement and to make repairs; pursuant to Sections 27, 28, 32, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord's agent testified that the current landlord took over possession of the property on December 4, 2012 and has submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the tenants and the previous landlord for a 1 year fixed term tenancy beginning on December 1, 2007 that converted to a month to month tenancy on December 1, 2008 for a monthly rent of \$825.00 (including parking for 1 vehicle) due on the 1st of each month with a security deposit of \$400.00 paid on November 1, 2007; and
- A copy of a tenancy agreement signed by the tenants and the current landlord for a month to month tenancy beginning on December 4, 2012 for a monthly rent of

\$876.00 (including parking for 1 vehicle) due on the 1st of each month with a security deposit of \$400.00 paid on November 1, 2007.

Both tenancy agreements include specific clauses and the new tenancy agreement has some additional clauses that are relevant to the tenant's Application. Specifically, the relevant clauses from the previous tenancy agreement and the relevant clauses in the new tenancy agreement include:

- Clause 14 that prohibits the tenants from installing a washer and dryer;
- Clause 20 that stipulates "only vehicles listed in the tenancy application and no other vehicles may be parked, but not stored, on the residential property. Vehicles must not leak fluids and must be in operating condition, currently licensed, and insured for on-road operation";
- Clause 43 (new) states "Smoking of tobacco products only is limited to the area described as smoking on deck outside"; and
- Clause 44 (new) stipulates the tenants will remove the tenant's RV from the back lot.

The tenants submit that they have been requesting some repairs for several years but the previous landlord never completed the repairs and that they have since made the same requests to the new landlord.

Specifically the tenants seek the following repairs:

- Repairs to the ceilings in the bathroom and the dining room that had been damaged from water damage from previous flooding above the rental unit;
- Repairs to doors in one of the bedrooms and the hallway closets;
- Repairs to the kitchen sink drain that clogs every 3 to 4 days;
- Replacement of old carpets – the tenants submit that the carpets are old but still serviceable except for the stains and cigarette burns.

The landlord confirms that they met with tenants in December 2012 and reviewed some of the issues identified by the tenants and agreed to complete the repairs to the ceilings. However the landlord understood the tenants would be leaving the rental unit in July 2013 during elevator renovations and thought he would complete the ceiling repairs at that time to minimize the inconvenience to the tenants.

The landlord also testified that as a result of the issues identified in the tenants' Application he met with them again last week to inspect the rental unit and look at the

other issues identified. The landlord submits that the closet door repairs are very minor and he will take care of them but that he will not be replacing the carpet as it is useable and the tenants have used area rugs to cover any unsightly marks or stains.

The landlord also submits that he has responded on 2 occasions to the tenants' reports of a plugged kitchen sink and that on both occasions he has run water for several minutes with no blockage problems, he does not see any problems with the plumbing.

The tenants also seek an order to require the landlord to allow the tenant to reinstate parking of her recreational vehicle (RV) in the parking lot. The tenants submit that the previous landlord had allowed them to park the RV in the lot while the rest of tenant parking is in the covered parking area. The tenants acknowledge that they did not have written permission or approval from the previous landlord for this parking.

The landlord submits that the tenants had parked the RV across four parking stalls in the parking area that is to be utilized by the commercial leaseholders on the first floor for their customers and points to the tenancy agreement that stipulates parking for one vehicle only and not for vehicle storage.

The tenants seek clarification on the issue of having a washer and dryer in the rental unit. The tenants submit that they have had the washer and dryer for several years and that the previous landlord's only concern was that he did not want the dryer vented outside through any windows, suggesting the landlord was aware of their use of the washer and dryer.

The tenants contend that despite the landlord having laundry facilities in the residential property it is too difficult for the tenants, due to their age and disabilities, to utilize the facilities provided. The tenants acknowledge they do not have permission in writing from the previous landlord allowing them to install a washer and dryer.

The tenants also submit that in a settlement agreement, documented through a February 12, 2010 dispute resolution decision with the previous landlord, where the landlord agreed to compensate the tenants for laundry services when they were forced to stay in a hotel after a flood in the unit confirms that the landlord was aware that they had their own washer and dryer in the unit.

The landlord submits that there is no documentation in the file that he received from the previous landlord that indicates the landlord had provided permission or was even aware the tenants had a washer and dryer in the unit.

The landlord submits that the settlement agreement also provides that the previous landlord agreed to compensate the tenants for hairstyling costs and as such the inclusion of the previous landlord's agreement for compensation for certain items does not provide conclusive confirmation that the landlord had agreed to allow the tenants to have a washer and dryer.

The parties agree the landlord has informed the tenants that beginning on July 2, 2013 the landlord has arranged to have upgrades completed to the elevator. The landlord confirms that he has no choice but to make these upgrades as a result of an order from the BC Safety Authority and that the work will take approximately 3 weeks to complete.

The tenants testified the landlord is suggesting that they take vacation at that time but that they cannot afford to leave the rental unit at the time but that to stay there without the use of an elevator will seriously inconvenience both tenants, in part due to their age and disabilities. The tenants testified that they have a number of ongoing medical appointments and general day to day living requirements mean that the tenants cannot just stay in the unit for three weeks.

The tenants also raised concerns that they fear being evicted by the landlord as a result of the smoking restriction in the new tenancy agreement. The tenants submit that they informed the landlord that one of the tenants smokes in her room and when they have guests over they smoke on the balcony.

The landlord testified that he simply recorded where the tenants identified that they usually smoke in the tenancy agreement and that he would not end a tenancy if the tenant smoked elsewhere in the unit.

Analysis

Based on the testimony of both parties, I accept the landlord intends to complete repairs to the bathroom and dining room ceilings and hall closets. As the tenants have indicated that they do not intend to vacate the property for 3 weeks in July 2013 I order the landlord to make these repairs within 3 weeks of the date of this decision. I accept, from the testimony of both parties, there is no need, currently, to replace the carpeting.

In relation to the tenants' concerns regarding the plumbing problems I accept that the landlord has responded to urgent requests from the tenants for unclogging the drain, however, as the tenants claim that these problems are ongoing, I order the landlord to have a qualified plumber assess the kitchen sink drain to determine if there are any

issues with the drains and if the plumber identifies any problems that they are corrected within 3 weeks of the date of this decision.

In relation to the issue of parking the tenants' RV, I find in the absence of any written approval from the previous landlord the current landlord has authority under the tenancy agreement to restrict the tenants parking of vehicles to the terms in the agreement.

As such, I find the tenants are entitled to park only one vehicle that is insured for on-road operation in the areas designated for residential tenant parking and as long as parking the tenants' RV does not conflict with this finding the tenant may park the RV.

In regard to the issue of the washer and dryer, again I find in the absence of any written permission or acknowledgement from the previous landlord that the tenants were authorized to install and/or use a washer and dryer in their unit the current landlord is entitled to enforce the terms of the original tenancy agreement that prohibit the use of a washer and dryer in the rental unit.

As to the tenants' assertion that the previous settlement agreement (dated February 12, 2010) confirms the landlord was aware of the fact the tenants had a washer and dryer in the unit, I note that there is no indication in that decision that this was why the landlord agreed to provide compensation for laundry during the tenants' hotel stay.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs or upgrades required by law could be seen as a breach of the covenant of quiet enjoyment because failure to do so would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a

portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

As such, I find there is no requirement for the tenants to leave the property during the elevator upgrades, except as a possible mitigation against any loss or damage, and that the landlord must consider options, specific to the needs of these tenants and their medical conditions, to assist the tenants in accessing their rental unit during the time required to complete the upgrades or to provide the tenants with compensation in lieu of any assistance.

While the obligation is on the landlord to determine how to ensure access to the rental unit is available and/or provide compensation I encourage the parties to discuss and agree upon possible options in advance of the work. The tenants remain at liberty to file an Application for Dispute Resolution seeking compensation, subject to their requirement to mitigate any damages or losses, should the landlord fail to meet this obligation.

And finally, in regard to the issue of smoking, I accept from the landlord's testimony and find that the clause in the tenancy is not a material term of the tenancy and as such cannot be used as a cause to end the tenancy should the tenants or their guests smoke in any other areas of the rental unit other than the balcony/deck.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 in the amount of **\$25.00** comprised of ½ of the \$50.00 fee paid by the tenants for this application, as they were only partially successful. I order the tenants may deduct this amount from a future rent payment in accordance with Section 72(2)(a).

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: February 28, 2013

Residential Tenancy Branch

