



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLLYBURN ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

This hearing dealt with a tenant's request for authorization to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

On a procedural note, the tenant indicated during the hearing that she wanted her request for a rent reduction to be calculated and applied retroactively to the beginning of the tenancy. I noted that the tenant had not indicated she was seeking a Monetary Order in filing her Application for Dispute Resolution. I also noted from the tenant's written submission that she was raising various issues or events at various different times during the tenancy; yet she had not clearly laid out a monetary claim showing calculations for specific amounts related to specific issues or timelines. Accordingly, I did not consider the tenant's request for a retroactive monetary claim and I informed the parties that I would consider a rent reduction for future months based upon repairs, services or facilities currently not provided.

Issue(s) to be Decided

Has the tenant established a basis for a rent reduction?

Background and Evidence

The tenancy commenced May 15, 2010 at which time the tenant was required to pay monthly rent of \$1,060.00 plus parking. Currently, the tenant is required to pay monthly rent of \$1,119.00 plus parking. The tenant is requesting that her rent be reduced to \$1,060.00 per month until such time her rental unit is restored to the same condition it was when her tenancy commenced.

It was undisputed that the landlord has undertaken a significant project to upgrade and replace the water system in the building and that there has been multiple water leaks in the rental unit and in the common areas.

The tenant submitted that as a result of the water leaks, the tenant's bathroom, linen closet and coat closet walls have been most affected. Currently, the tiles on one wall in the bathroom are not properly sealed or supported. It is undisputed that several months ago the landlord had asked the tenant whether she wanted the tiles replaced or whether she wanted to wait until the water upgrade project reaches her unit. The tenant's response to the landlord was that she would wait for the upgrading project to reach her unit; however, the tenant is now of the position that the project has taken far longer than first anticipated and she is no longer willing to wait. The landlord indicated that they could replace the affected tiles within two weeks of the hearing date I ORDERED the landlord to do so.

The tenant submitted that due to the multiple leaks in the past she keeps items in plastic totes in her linen closet and the tenant does keep shoes on the floor of the hallway closet. The drywall in both closets is roughly patched and/or stained with water marks. The landlord confirmed that items in the tenant's linen closet are in totes as are some other items on the floor of the tenant's hall closet. The landlord stated that acute leaks are repaired as soon as possible but given the on-going nature of the water system project the drywall in the closets has not been given its final patch, sand or paint.

The parties raised an issue with respect to the dishwasher. The tenant acknowledged that she had not previously complained of a problem with the dishwasher to the landlord. The landlord stated that the dishwasher problem was detected by the landlord during a recent suite inspection and that a replacement dishwasher has been ordered for the tenant's unit.

In general, the tenant is of the position the landlord does not sufficiently respond to or complete the repairs in her unit or the property. Whereas, the landlord was of the position that a major water system replacement project is underway and the landlord responds to requests for repairs in a reasonable and timely manner; however, while the water system is undergoing replacement there may be issues with water leaks and construction. It is anticipated that the water system upgrade will reach the tenant's unit on or about May 8, 2013.

Analysis

Under the Act, a landlord is required to repair and maintain a property so that it complies with health, safety and building laws, and is suitable for occupation.

A tenant that suffers a loss of use of the property due to outstanding repair issues may be entitled to compensation even if the repairs are outstanding due to no fault or negligence on party of the landlord. Compensation is usually in the form of an abatement of rent for the portion of the premises or property affected.

It is important to note that any monetary claim requires a party to take reasonable action to mitigate or minimize their loss. Accordingly, where a tenant requires repairs it is reasonable to expect that the tenant notify the landlord of the repair issue and give the landlord a reasonable amount of time to remedy the situation. Temporary loss or inconvenience is usually not compensatory.

I also strongly encourage the tenant to give the landlord written notice of any future repair requests and if the landlord uses a standard form I find it reasonable to expect the tenant use such a form.

Upon considering everything presented to me, including: photographs, written submissions, and oral testimony, I accept that there are outstanding repair issues in the tenant's rental unit; namely: the bathroom tiles on the wall with the faucet, the linen closet and hall closet walls, and the dishwasher.

With respect to the dishwasher, I am satisfied the landlord has taken reasonable action to order a replacement dishwasher once the problem was detected. Nor, did it appear the tenant noticed the problem herself. Therefore, I was satisfied the landlord will take care of this repair issue and I find it unnecessary to make a repair order or rent abatement for the dishwasher.

With respect to the bathroom tiles, I accept that the tenant had previously indicated she would wait for tile replacement until the water system replacement project reached her unit and that only during the hearing did she clearly indicate otherwise. As the landlord was agreeable to replacing the affected area within two weeks of the hearing date I find the landlord's response adequate in the circumstances and I make no order for rent abatement. As stated during the hearing, the landlord is ORDERED to replace the affected tile area within two weeks of the hearing date.

I accept that the linen closet and hall closet have been prone to leaking and it is undisputed that the walls are likely to remain unfinished until the upgrade project reaches the tenant's unit. Given the multiple water leaks in the past I find the tenant has a reasonable basis to expect that another leak is likely and her use of plastic totes or choosing not to use the space for its intended use is reasonable in the circumstances. I also accept that a project as large as this one is also subject to delays and since the closet repairs are dependent upon the progression of the project I find it appropriate to authorize a rent reduction. I authorize the tenant to reduce her rent by \$35.00 per month starting April 1, 2013 and continuing until the water upgrade project has been completed in her unit and the walls fully patched, sanded and painted.

When the landlord makes the final repairs to the linen closet and hall closet, the landlord is to notify the tenant in writing so as to put her notice that her rent will resume to the full amount for the following month.

Conclusion

The tenant has been authorized to reduce her rent by \$35.00 per month, starting April 1, 2013, until such time the landlord gives the tenant written notice that the linen closet and hall closet walls have been repaired, including necessary patching, sanding and painting.

The landlord was ordered to replace the bathroom tiles on the affected wall within two week of the hearing date.

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: April 05, 2013

Residential Tenancy Branch