Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Saanich Peninsula Realty Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a rent reduction and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

The landlord's agent submitted that the tenant had named him as the landlord but that, in fact, the tenancy agreement stipulated the landlord was Saanich Peninsula Realty Ltd and he was their agent.

While the landlord sought to have the tenant's Application dismissed because she named him as the respondent the tenant agreed to amend her Application to name the corporate landlord and remove the agent's name.

As the landlord's agent has represented the actual landlord for the duration of the tenancy I find there is no prejudice against either the landlord or the agent to proceed with this hearing with the above noted amendment. I decline to dismiss the tenant's Application on this basis.

During the hearing I advised the parties that while the tenant had submitted a written statement in her evidence package received by the Residential Tenancy Branch on July 5, 2016 that requested certain repairs be made I would not consider these additional requests.

When the tenant submitted her Application for Dispute Resolution she indicated that she was only seeking compensation and a rent reduction for the landlord failing to provide repairs, services, or facilities agreed upon but not provided. The tenant did not submit an Amendment to an Application for Dispute Resolution form seeking to amend her Application to include a list of repairs.

I also note that the tenant's original Application was for compensation for specified issues: fleas; stove; storage; and breach of contract and the additional repairs requested included: painting; carpets cleaned; cupboard door; and replacement of

stove elements. With the exception of the stove elements none of these repairs were identified as part of the original Application. The parties confirmed the stove elements were replaced the week prior to the hearing.

Residential Tenancy Branch Rule of Procedure 4.1 states an applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC office.

An amendment may add to, alter or remove claims made in the original application. As stated in Rule of Procedure 2.3, unrelated claims contained in an application may be dismissed with or without leave to reapply.

I find the tenant has failed to submit an Amendment seeking to amend her original Application. I also find the repairs requested are not related to the tenant's original claim for compensation. For these reasons, I decline to amend the tenant's Application. The tenant remains at liberty to file an Application seeking repairs under a new Application for Dispute Resolution.

The tenant had arranged for a witness to attend the hearing. Prior to calling the witness I queried the tenant as to the content of her witness's testimony. The tenant submitted that the witness would speak to the condition of the rental unit and comments from other occupants of the complex.

I determined that this testimony was outside of the scope of these proceedings and not relevant to the outcome of this hearing. As such, the tenant's witness was not called to provide testimony.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a rent reduction and to a monetary order for compensation, pursuant to Sections 32, 65, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on April 22, 2015 for a month to month tenancy beginning on May 1, 2015 for a monthly rent of $1,100.00 due on the 1st of each month with a security deposit of $550.00 paid.

The parties agreed the tenant took possession of the rental unit earlier than the start date noted in the tenancy agreement. The landlord testified that the tenant contacted him and wanted access to the unit early. He stated that the previous occupants have vacated the unit. He further stated the previous occupants had left behind some

belongings and he advised the tenant that he could not remove the items but if she needed to move them she could.

The landlord later clarified that normally if a new tenant was moving into the rental unit on the start dated of the tenancy and a previous occupant had left belongings he would remove them and place them in storage as per the requirements under the *Act*. He also indicated that he had no particular reason as to why he did not then remove the previous occupants' belongings on the start date of this tenancy (May 1, 2015).

The tenant stated that she had repeatedly requested the landlord remove these belongings when he came to pick up rent. The tenant provided no evidence of any documented communication on these matters such as emails; letters; or notes between the tenant and the landlord.

The parties agreed these belongings were removed in August 2015. The landlord provided a copy of his receipt for this removal and records the dates of August 4, 2015 and August 5, 2015.

The tenant seeks compensation in the amount of $100.00 per month for 3 months for a total of $300.00. The tenant submitted that she determined this amount by averaging the cost of renting storage facilities for the amount of belongings that had been left in the yard until they were removed.

The landlord disputed that the tenant had repeated discussions with him on this issue. He also submitted that the tenant had never mentioned that she wanted any compensation until he received her Application for Dispute Resolution.

The tenant also seeks compensation in the amount of $50.00 per month for 13 months for a total of $650.00 for the landlord's failure to replace 3 elements on the rental unit stove.

Both parties submitted a copy of a Condition Inspection Report recording the condition of the rental unit at the start of the tenancy. I note that the Report indicates that there is a need to replace 2 small and 1 large element on the stove; that the walls in most rooms are scuffed; that the carpets/flooring need cleaning; a few bent components of blinds in the living room; and missing some trim in the kitchen.

The tenant submitted that she requested from the landlord replacement elements for the stove every month when she paid the rent to the landlord with the exception of in the months of September and October 2015.

The tenant stated that the elements did work on occasion but not always and when they did work they only did so on high. The landlord suggested that as such the tenant was not inconvenienced because they would work.

The landlord submitted that the need for the replacement of these elements was not an emergency and that the *Act* allows for the tenant to have the elements replaced; submit the invoices/receipts to the landlord and be reimbursed for the costs. The landlord likened the elements of a stove to the requirement that the tenant's must replace their own lightbulbs.

The tenant also seeks compensation in the amount of $47.90 as reimbursement for the purchase of flea traps. The tenant contends that the unit was infested by fleas from the previous occupants. The tenant confirmed that she has never raised this issue with the landlord until this Application.

The tenant testified that because of the issues related to storage of the former occupants' belongings; the failure to replace the elements; failure to clean the carpets and paint despite agreeing to do so on multiple occasions the landlord is in breach of contract and she seeks an award of $1,100.00.

The landlord testified that there has not been agreement by the landlord to clean or paint the rental unit. The landlord submitted that the tenant agreed to accept the condition of the rental unit and was aware it had required cleaning when she moved into the unit. The landlord further stated that the tenant had been compensated for cleaning the rental unit at the start of the tenancy in the amount of $125.00 corresponding to the amount the landlord retained from the previous occupants' security deposit for cleaning.

In support the landlord submitted documentary evidence to confirm the deduction from the previous occupants' security deposit and payment made to the tenant for cleaning. The tenant did not dispute the landlord's evidence.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Residential Tenancy Policy Guideline 16 states:

> "An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been

proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

- The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.
- The damage must also be of the type that the wrongdoer should reasonably have foreseen in tort cases, or in contract cases, that the parties had in contemplation at the time they entered into the contract that the breach complained of would cause the distress claimed.
- They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought.

An arbitrator does not have the authority to award punitive damages, to punish the respondent."

Section 32(1) of the *Act* requires the 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 having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

Under the heading of Major Appliances in Residential Tenancy Policy Guideline 1 the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

At the start of a tenancy under Section 32(1) the landlord is required to provide a rental unit in such a condition that it is suitable for occupation by a tenant. While the landlord was not required to allow the tenant access to the rental unit before the agreed upon

start date in the tenancy agreement, I find that once he did agree to allow the tenant to move in before May 1, 2015 he was then obligated to ensure the rental unit was suitable for occupation by the tenant.

I find that this means that the landlord was responsible to provide a rental unit, including the residential property, was cleaned and did not contain any of the previous occupants' belongings. Furthermore, I find the landlord provided absolutely no reason as to why he chose to leave the belongings on the residential property until August 2015.

As such, I find the landlord failed to comply with the obligations under Section 32(1). I also find that as a result the tenant has suffered a loss in the value of the tenancy. However, I am not convinced that equating the value of that loss to that of what it would cost to store these belongings in storage facility is a valid valuation in these circumstances.

If these items were placed in a storage facility they would have included some form of security of the premises and protection from the exterior elements. In this case the items were simply left in the yard with no security or protection from weather. Rather, I find the value of the loss is more likely to be determined in relation to the value and usage of the yard and exterior facilities.

As the tenant has provided no evidence as to how much the value of the tenancy may have been reduced by the storage of these belongings other than the comparison to the cost of storing the volume of items I will award an nominal amount of $150.00 for the loss in value of the tenancy.

I find that the landlord was aware of the need to move these belongings from the start of the tenancy and had no valid reason to delay the movement until August 2015. I also find that it would not be reasonable to expect the tenant to have to contact the landlord to remind him to move it; he was aware of his obligation and no reason for any delay in the execution of that obligation. As such, I find there is nothing the tenant could have done to mitigate the duration of this decrease of value of the tenancy.

In regard to the tenant's claim for compensation for the landlord's failure to replace the 3 stove elements, I find that the landlord was aware of the need for replacement of the elements at the time the tenancy began, primarily based on the notation in the Condition Inspection Report.

Section 33 stipulates that "emergency repairs" means repairs that are:

> (a) Urgent,
> (b) Necessary for the health or safety of anyone or for the preservation or use of residential property, and
> (c) Made for the purpose of repairing
>> (i) Major leaks in pipes or the roof,
>> (ii) Damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) The primary heating system,
(iv) Damaged or defective locks that give access to a rental unit,
(v) The electrical systems, or
(vi) In prescribed circumstances, a rental unit or residential property.

The section goes on to say that a tenant may have emergency repairs made only when all of the following conditions are met:

(a) Emergency repairs are needed;
(b) The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
(c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

The section includes an obligation on the part of the landlord to reimburse a tenant for amounts paid for emergency repairs if the tenant:

(a) Claims reimbursement for those amounts from the landlord, and
(b) Gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

I note that there are not similar provisions, under Section 32 of the *Act*, that impart an obligation on the landlord to reimburse the tenant for repairs made that are not considered emergency repairs.

In addition, as noted above, Residential Tenancy Policy Guideline 1 clearly outlines the obligation to ensure major appliances are repaired lies with the landlord unless the repair is required because of actions or neglect on the part of the tenant. As the replacement was noted in the Condition Inspection Report, I find there is no possible way that the tenant should be held responsible for replacement of elements of a stove when the condition existed before the tenancy.

I also find that the tenant had no authourity under the *Act* to make the repairs herself and later seek reimbursement, as they would not be found to be emergency repairs, except in relation to mitigation when claiming a loss.

Based on the submissions of both parties I find the landlord has violated Section 32 of the *Act* by failing to replace the stove elements and as a result the tenant has suffered a loss in the value of the tenancy. I find that the use of stove when provided as part of residential tenancy agreement is an integral and material term of any tenancy for occupation of home.

Residential tenancies are by definition a place where the tenant will live. That is to say they will use the property to live; to sleep; to toilet; and to eat. When the tenancy

includes provision of a stove with four elements and three of those elements are not useable I find it is a major component of the valuation of that tenancy.

I accept the tenant's submission of $50.00 per month as being a reasonable amount for the loss in the value of the tenancy for each month until the elements were replaced, subject to the tenant's obligation to mitigate this loss.

Section 7(1) of the *Act* allows that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

However, Section 7(2) stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord disputes that the issue was discussed each time the tenant paid rent and the tenant has no documentary evidence such as emails or notes to confirm that she had ever raised the issue with the landlord. There is also no evidence before me that she had ever sought an order from the Residential Tenancy Branch to have the landlord make the repair.

As a result, I find the tenant has failed to provide sufficient evidence to establish that she took any steps to minimize her damages or losses. Therefore, I dismiss the tenant's bulk of the claim for compensation for the landlord's failure to repair the stove. I will grant the tenant a nominal award of $50.00 per month for 3 months or a total of $150.00 because I find the landlord was aware of the problem from the start of the tenancy and should have made the repair without any notification from the tenant.

As the tenant had never informed the landlord of any flea problem I find that the landlord cannot be held responsible for the costs the tenant incurred for the purchase of flea traps. I dismiss this portion of the tenant's claim.

In regard to the tenant's claim for $1,100.00 as compensation for the landlord's breach of contract, I find the tenant has provide insufficient evidence of any agreements that have obligated the landlord to complete any specific work on the rental unit over and above the obligations set forth for the landlord in the *Act*, regulation and tenancy agreement, with the exception of the storage and stove element issues as I have determined above.

I also note, in relation to those breaches, that I have found the tenant was entitled to specific compensation in both of those cases based on the general losses of the value of the tenancy. I am not satisfied that the tenant has provided any evidence to support an entitlement to any additional amounts for any non-pecuniary losses, specifically her claim for $1,100.00.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **$300.00** for loss of the value of the tenancy. I order the tenant may deduct this from a future rental payment, pursuant to 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: August 12, 2016

Residential Tenancy Branch