Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought a retroactive rent reduction in the amount of $2,559.79 and recovery of the filing fee.

The teleconference hearing was originally scheduled for June 21, 2017; as the hearing did not complete it was adjourned, by my interim Decision of June 21, 2017, to September 5, 2017. Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

On August 11, 2017 the Tenant filed additional evidence in support of her claim. As per my Interim Decision of June 21, 2017 the parties were prohibited from filing additional evidence; consequently, I did not consider the Tenants' evidence filed August 11, 2017.

At the continuation of this hearing on September 5, 2017 the Landlord's representative, R.C. also stated that they submitted evidence, including a copy of the tenancy agreement. A review of the Branch records indicates that no evidence was submitted by the Landlord. In any case, as I prohibited the parties from filing additional evidence during the period of adjournment, the evidence submitted by the Landlord is not admissible.

Aside from the above, no other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenants confirmed on their Monetary Orders worksheet that they sought monetary compensation from the Landlord in the amount of $2,559.79 as well as recovery of the filing fee. This relief was not claimed on her Application for Dispute Resolution. The Landlord's representative confirmed that it was his understanding, based on the Monetary Orders Worksheet filed by the Tenants, that the Tenants sought these amounts.

The Tenants also filed an Amendment to an Application for Dispute Resolution on August 11, 2017 wherein they indicated their claim was $2,559.79.

Pursuant to section 64(3)(c) of the *Residential Tenancy Act,* I amend the Tenant's Application for Dispute Resolution to claim a Monetary Order.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation for a retroactive rent reduction?

2. Should the Tenants recover their filing fee?

Background and Evidence

The Tenant testified that the tenancy began February 2015.

Filed in evidence was a Monetary Orders Worksheet wherein the Tenants confirmed they sought the following:

Restaurant food	$830.00
Rent reduction for April 2017	$1,126.00
Compensation for increased electrical utility during construction	$463.79
Filing fee	$100.00
"cost incurred for having to file for evidence"	$40.00
TOTAL CLAIMED	**$2,559.79**

The Tenant D.A. testified that the basis of their claim relates to the fact that the Tenants were not able to use the kitchen for a period of 40 days between March 13 until April 24,

2017. She stated that they had water entering the kitchen as early as the beginning of February 2017 which was not resolved until late April.

The Tenant testified that initially a plumber checked the pipes for a leak at the request of the property manager following which a roofer came in as they were worried the water originated from the roof. The Tenant stated that she believed that the water issue was likely due to a hole or crack in the exterior of the house and a previous rat infestation from the year prior, in April 2016. The Tenant reported that on February 24, 2017 she had correspondence from the strata and the Landlord regarding the source of the water, which she described as “a waste of time”.

The Tenant further stated that on March 2, 2017 a restoration company arrived. A trench was dug on March 6, 2017. On March 6, 2017 they discovered three large holes which were made by the rats and confirmed this was the source of the water leak. The Tenant further stated that the wall was removed and a piece of plastic was put up in its place; she also submitted a photo depicting this.

The Tenant stated due to the extensive repairs she was required to pack the weekend before on March 11 and 12. The Tenant also claimed this was made more difficult as she suffers from several disabilities including: chronic pain from a broken tailbone fibromyalgia; chronic migraines; and, chronic pain in her legs due to stress fractures.

The Tenant confirmed that she lives in the rental unit with her son (the other named Tenant). She stated that she asked for help with the food costs on March 14, 2017 as she lives on a disability wage, her son has a lot of debt, and they were not able to afford to pay for restaurant meals every day. She stated that R.C. agreed that she would not be required to pay rent for April 2017. The Tenant confirmed that she was not required to pay rent for the entire month of April 2017 and therefore she believes she received a free month’s rent from the Landlord, in compensation for March 2017.

In the within action, the Tenant requested $830.00 in compensation for increased costs. The Tenant stated that her regular food costs are $450.00 per month and she claimed that during the 40 days she was not able to use the kitchen she was forced to go to restaurants and therefore sought the sum of $32.00 per day, for a total of $1,280.00. The Tenant conceded that she did not submit any receipts to support her claim that her regular food costs are $450.00 per month; rather she submitted that this was based on “common sense”. She further stated that the figure of $32.00 per day was a figure she received from R.C.; a copy of this email was provided in evidence and reads as follows:

> "From our point of view, and the point of view of the strata managers who are doing the necessary repair work, the property is not livable. We're content with letting the tenancy end at this point, given that the costs to the owner may be unsustainable.
>
> With that said, we understand that you did not buy insurance and are, as a result, self insuring for a peril that is normally covered by insurance. In other words, we required you to purchase insurance in anticipation of this sort of loss and you chose not to. It is not air that the total cost of this inconvenience be shouldered by the owners, given that they did not create it, and that you did not insure against it despite agreeing to do so.
>
> If we take your rent and break it down to a daily amount you pay approximately $35.00. It's hard to believe that a daily restaurant bill would be less than that. If you add to that cost a reduction in rent and a reduction I n hydro you can see that you seem to be asking the owners of the property to pay you to stay.
>
> In other words, assume you pay one month's rent in the amount of $1,126.70 in rent. If we reduce that by, let's say, 15% for the loss of the kitchen, then you'd have to pay $957.70. If we compensate you for restaurant food for 30 days at $32/day the owners have to pay you back exactly what you paid in rent.
>
> If you then require them to compensate you for hydro they'll have to reach in their pocket and begin incurring losses. Add that to the fact they are still paying a few hundred each month in strata fees, plus taxes, plus their fee to us and you can see that they're losing move money. On top of that they also have a mortgage payment to make each month.

The Tenant stated that on March 15, 2017 the restoration company came to the property because of the amount of water that was accumulating. She stated that at this time a garbage can sump pump was installed.

The Tenant stated that she did not have use of her kitchen or her living room until April 21, 2017 when the countertops were installed. The Tenant stated that despite the repairs being completed, on April 27, 2017 the kitchen sink wasn't draining and she had to call the Landlord again. She stated that it was determined that the garburator wasn't working, which caused the drainage issues.

The Tenant stated that in total she was not able to use her kitchen from March 11 (when she started packing up) to 6:00 p.m. on April 21, 2017 when the counter was installed.

The Tenant also claimed that she was not able to use the entire lower floor of the rental unit, which includes the kitchen, living room and dining room until April 21, 2017. She stated that because the plastic wall was built in the living room she had to pack up all of her items and move them into the centre of the room.

The Tenant then claimed that the house was not back to "the way they rented it" until the end of May 2017 as although the inside of the house was done by April 28, 2017,

the exterior of the house was not complete. The Tenant stated that the trench was dug in early March of 2017 but as the water level continued to rise, the restoration company installed a garbage can sump pump which she claimed was not removed until May 30, 2017. She stated that there was a large “firemen” hose across the sidewalk which created a hazard. The Tenant stated that when the pump started up it made a loud sound as well.

The Tenant stated that the outside was a filthy mess and her garden was all dug up. She also stated that the workmen just threw her items around, including her son’s expensive work boots. She also stated that she keeps her place clean and welcoming and the condition was appalling. She stated that a neighbour called the strata because of the hazard created by the large hose.

The Tenant stated that on May 23, 2017 she woke up to workers cutting up the concrete. She stated that she was not given any notice of this work. She also stated that her mother was dying in the hospital at this time and she was not able to leave her home. She stated there wasn’t even a piece of tape across her door to warn her about the concrete being cut up.

The Tenant stated that she tried to resolve this issued prior to filing her application and stated that all she was asking for was one more month’s compensation for the hazard and mess. She also stated that she believed that it was caused by the Landlord’s negligence in terms of the lack of appropriate response to the rat issue in April 2016. She stated that they found five nests in the wall behind her refrigerator. She stated that when she first moved in the neighbours asked her if there were still rats in her unit as there was a problem before. She also stated that when the wall was exposed they found copper wire stuffed in holes to prevent the rats such that the Landlord knew this was a problem.

The Tenant sought the sum of $463.79 for increased hydro costs as she claimed that the sump pump, the fans, the concrete cutter, and all the power tools were powered by her electricity. In support she provided copies of her hydro bill for May 2016 and May 2017 which indicated that her hydro increased by this sum. She confirmed that she spoke to R.C. about this and he did not respond to her request.

The Tenant confirmed that she is seeking compensation equivalent to an additional month, such that she would be compensated for a total of two months’ rent, bearing in mind that she had already received a free month such that she sought the sum of $2,559.79 for the following:

Restaurant food	$830.00
additional month of rent reduction	$1,126.00
Compensation for increased electrical utility during construction	$463.79
Filing fee	$100.00
“cost incurred for having to file for evidence”	$40.00
TOTAL CLAIMED	**$2,559.79**

In response to the Tenants’ claims the Landlord testified as follows:

In terms of the Tenants’ request for compensation for loss of use and the payments received by the Tenants thus far, R.C. confirmed that the Tenants were not required to pay April 2017 rent as compensation for the issues she dealt with. He stated that the Landlord was aware that the Tenants were suffering some loss of use. He stated that at the time the Tenant was permitted to withhold her April 2017 rent they were not sure how long the restoration would take and as such it was not considered a partial or full payment as they did not know.

R.C. further stated that “early in the process”, the Tenant informed the Landlord that they were strapped for cash and at that time the Landlord gave her $300.00 in cash to help her get through the “ordeal”; he stated that it was approximately March 13, 2017 that she received this payment and he had the Tenant sign a receipt at the time.

R.C. confirmed that the Tenants did not receive any further compensation from the Landlord.

R.C. confirmed that when the Tenant asked for a further month’s compensation the Landlord felt that the free month’s rent and the $300.00 in compensation was sufficient; he confirmed the Landlord continues to believe this is an appropriate amount of compensation.

R.C. stated that there were two jobs going on, a leak which occurred in February of 2017, which they believed was a plumbing issue and which turned out to be a drain tile issue. R.C. stated that the property was originally built, in the 1980’s, without drain tiles, as was acceptable at the time. R.C. confirmed that there was a dispute between the strata corporation and the Landlord as to who was responsible for the repair. He confirmed that the work began early March 2017.

R.C. stated that they dug out the garden box, took the vinyl siding and wood siding off the outside of the house. They discovered that there was waster ingress. They dug a hole and put in a sump pump inside a garbage can to prevent the mud from coming in.

R.C. confirmed that the insurance company insisted that the lower kitchen cabinets would need to be removed because they were particle board and had absorbed moisture.

R.C. stated that at that time when he initially spoke to the Tenant in March of 2017, he told her that she would need to make an insurance claim so that she could be put up in alternate accommodation. He claimed this was a term of her tenancy agreement. (As noted in the Introduction section of this my Decision, the Landlord stated that the tenancy agreement had been submitted with the landlord's evidence shortly after they received the Tenant's claim. Notably, Branch Records do not indicate the landlord submitted any evidence.) R.C. stated that the Tenant responded that she did not have insurance. R.C. stated that he told the Tenant that this was going to be a big job, and that if she did not have insurance, she should mutually agree to end the tenancy so she could move to another rental as he did not know how long the repair would take. R.C. stated that in response the Tenant said that she did not have insurance and did not want to move.

R.C. stated that the Tenant also said she could do without cabinets, but could do dishes upstairs.

R.C. confirmed that when they started the work they believed this was just a drain tile issue, and it turned out to be another job.

R.C. stated that the Tenants' claim that there was no wall, is not true. The sheeting and vinyl was removed, as well as drywall to a certain level. He stated that while they were doing this, they discovered that there was rat activity in the "party wall", which he described as the wall between two strata units, which includes approximately 10 inches of wall, as there is a full wall on each side and an air space. R.C. stated that this was at the end of the kitchen renovation, as they were just about to put in the cabinets; he stated that this was when the job expanded into the living room and dining room. He stated that again he spoke to the Tenant about mutually agreeing to end the tenancy. R.C. stated that they then discovered that there was a two foot high concrete wall, again mirrored on both sides with an air space.

R.C. stated that the leak was not due to the previous rat infestation, it was due to a lack of drain tiles. The rat infestation created a secondary problem which was not discovered until the kitchen was almost ready to be put back together.
R.C. confirmed that the work began March 13 and went on until April 21 when the counters were put in. He stated that the drain issue on April 28 was a separate issue related to a garburator that "packed it in".

R.C. stated that the planter box was removed right when the work started as the plumber believed it was water ingress. R.C. stated that the box was rebuilt a little way away from the house and was completed at the end of April or early May. He stated that the vinyl siding was also replaced in early April.

R.C. further testified that the Landlord was not aware of the exterior work as that was done by the strata corporation. He stated that the strata corporation did this work over several units which involved putting in drain pipes and a French drain. He stated that originally the strata corporation believed it was a roofing issue, but then another rental unit flooded and the strata corporation discovered that it was a larger drain tile issue.

R.C. submitted that the Tenant lost the use of the kitchen from March 13 to April 21. He further submitted that approximately April 1, 2017 she lost general use of the living room and dining room until April 21. He stated that while that is extensive, she still had two bedrooms and two bathrooms which were available to her such that the rental unit was usable to some extent.

In response to the Tenants' claim for compensation for restaurant food, R.C. stated that the Tenant did not submit any evidence in support of this. R.C. stated that when he offered the Tenant to move out she said she would stay and "tough it out". R.C. further stated that the Landlord should not be held liable for this choice.

In response to the Tenants' claim for increased utility costs, R.C. noted that the Tenant provided a copy of her hydro bill at Exhibit 119; this bill confirms that the Tenants' utility is subject to an *annual* adjustment and the amount she is claiming represents this annual adjustment and the increased heating costs associated with the recent cold winter. He confirmed that the bill represents the April 12-May 11, 2017 time period, which doesn't include the March 13-April 21, 2017 time period. The usage went from 18 KW in 2016 to 30 KW in 2017, which isn't double, but even if it was, her installments were only $114 per month, such that even if it doubled, it would not equate to the amount she is claiming.

In reply the Tenant stated that she did not see anything in her lease regarding an obligation to have Tenants' insurance.

The Tenant confirmed that the work inside of the house occurred between March 13, 2017 and April 21, 2017. She stated that the outside work began March 6, 2017 and went on until the end of May 2017.

In reply to the Landlord's claim that the exterior work was done by the strata, the Tenant stated that she was not sure who was responsible for what, and she felt like the "middle man" reporting back.

The Tenant confirmed that she received a $300.00 cash payment on March 28, 2017. She stated that she did not want to move because she is on disability and the rental unit worked for them and was something they could afford.

In reply to the Landlord's submission regarding the increased electrical utility charges, the Tenant stated that when they first moved to the rental unit they were paying $150.00 per month as a sort of savings plan and at the end of the year (when their usage and installments were reconciled) they received a credit of over $400.00. She stated that their installments then went down to $114.00 per month, but they continued paying $75.00 biweekly in hopes that when the reconciliation occurred again they would receive another credit. Instead, she argued due to the increased use by the Landlord's workers as a result of the flooding, they were charged an additional $463.79.

Finally, the Tenant submitted that the Landlord failed to submit any evidence in support of their position and that the water issues were not due to their negligence with respect to the 2016 rat infestation, not drainage tiles as alleged by R.C.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website**:** **www.gov.bc.ca/landlordtenant**.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Tenants have the burden of proof to prove their claim.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides a follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

> (3) A tenant of a rental unit 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 residential property by the tenant.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.
>
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

> **8** (1) Landlord's obligations:
>
> > (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
> >
> > (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

The above mandates a Landlord to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards. I find the Landlord fulfilled the above obligations by attending to the required repairs. I accept the Landlord's representatives' testimony that the extent of the work was not known until the project was underway. I do not accept the Tenant's submissions that the water issues were a result of the Landlord's negligence in terms of dealing with a prior rat infestation.

It is the case that a landlord is not the tenant's insurer. Further, it is a requirement of most tenancy agreements that a tenant carry tenant's insurance. While the subject tenancy agreement was not properly before me, this does not absolve a tenant from taking steps to minimize their losses; further, section 7 of the *Act* mandates that a claiming party must mitigate their losses. The Tenants, in failing to obtain rental/tenant's insurance failed to protect themselves against such losses and failed to take steps to minimize any such losses.

The Tenant stated that in total she was not able to use her kitchen from March 11 (when she started packing up) to 6:00 p.m. on April 21, 2017 when the counter was installed. The Tenant also claimed that she was not able to use the entire lower floor of the rental

unit, which includes the kitchen, living room and dining room until April 21, 2017. This represents 41 days. While this was understandably disturbing for the Tenants, I note they were able to use other parts of the rental unit.

The Tenants failed to submit any evidence in support of their claim for the cost of restaurant meals, such as receipts for said meals, or bank statements confirming the amounts paid for groceries prior to March 11, 2017. As such, I find the Tenants have failed to prove their claim for compensation for restaurant meals and I dismiss this portion of their claim.

The parties agreed that the Tenant was compensated one months' rent, in addition to $300.00 for a total of $1,426.00. As the Tenants' monthly rent is $1,126.00 the per diem rate is $37.02 calculated as follows:

$1,126.00 x 12 months = $13,512.00 / 365 (days) = $37.02 daily rate

As such, the sum of $1,426.00 represents reimbursement of the full amount of rent paid for a total of 38.5 days.

As noted, the Tenants were able to use parts of the rental unit and were not completely displaced. Further, they were not forced to pay for storage of their items. Accordingly, the Tenants did enjoy some benefit of the rental unit during this time.

The passage reproduced previously in this my Decision (which was introduced by the Tenant to support her claim of $32.00 per day for food) aptly describes the Landlord's predicament in terms of the Tenant's request for reimbursement of all the rent paid *in addition to* the cost of restaurant meals *and* contribution towards her utility costs.

I find, based on the evidence before me, that the Tenants were fairly compensated for the lack of use of their kitchen as well as the impact on the living areas adjacent to the kitchen. The $1,426.00 represents all but 2.5 days of rent paid for the relevant period, such that the Tenants have already been refunded 94% of the rent they paid during the material time. As they had the use of other areas of the rental unit, I decline the Tenants' request that I provide them with additional compensation in the form of another month's rent.

I accept the Landlord's testimony that the outside work was performed by the strata. While I also accept the Tenant's testimony that the condition of the exterior of her home was upsetting to her, I do not find the Landlord responsible for any related compensation.

As noted, the Tenant submitted an electrical utility bill which indicated an annual adjustment. This bill did not provide sufficient details as to the electrical use during the time period when the repairs to the rental unit were being made nor did this bill provide a comparison of the amounts used in the previous years as opposed to the time in question. I therefore find that the Tenants have failed to establish their claim that the increased electrical utility charges related to the use of equipment during the time in question.

The Tenants sought $40.00 for the cost to file their evidence. This is not recoverable under the *Residential Tenancy Act.*

As the Tenants have been unsuccessful, I find they must bear the cost of the filing fee.

Conclusion

The Tenants claim is dismissed.

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*.

I acknowledge that this Decision is being delivered one day more than 30 days after the conclusion of the hearing. I confirm that the validity of my Decision is in no way affected by the fact the Decision has been rendered after the 30 day period provided for in section 77 of the *Act.*

Dated: October 5, 2017

Residential Tenancy Branch