Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARTELLO TOWERS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR FF

Introduction

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

- recovery of the filing fee from the landlord pursuant to section 72 of the *Act;* and
- a reduction in rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act.*

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented at the hearing by building manager, O.C. (the "landlord").

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") in person on August 10, 2017. In accordance with section 88 of the *Act*, I find that landlord was duly served with the Application. The landlord testified that no evidence was submitted with the tenant's application, and I note that no evidence was received by the *Residential Tenancy Branch* regarding the tenant's application.

On October 10, 2017, the same date as the hearing, the tenant provided the *Residential Tenancy Branch* with an evidentiary package. *Residential Tenancy Branch Rule of Procedure 3.14* states, "Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy branch directly or through a Service BC Office not less than 14 days before the hearing." As this evidentiary package was served to the *Residential Tenancy Branch* on the same day of service, and beyond the dates prescribed by *Rule 3.14* it will not be considered at this hearing.

Issue(s) to be Decided

Is the tenant entitled to a retroactive reduction in rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

The tenant testified that this tenancy began on November 1, 2016. It was for a fixed-term length of 1 year. Rent was $1,525.00 monthly and a security deposit of $762.50 collected at the outset of the tenancy continues to be held by the landlord.

The tenant explained that she sought a retroactive reduction in rent for the entire length of her tenancy. Specifically, the tenant wished to recover an amount equivalent to $50.00 per month.

During the course of the hearing the tenant explained that she had experienced a loss of enjoyment related to her tenancy as the building had undergone significant repairs and it was for this reason why she sought a retroactive reduction in rent. When asked how she arrived at the figure presented during the hearing, the tenant explained that she had spoken to other residents of the building, and $50.00 per month, was approximately the amount they had received during their arbitrations.

Specifically, the tenant said that she had lost the use of the swimming pool for 2 weeks in August 2017, the loss of her balcony for July, August and part of September 2017, was unable to use the front entrance of the building and could not access the building's round about, making it difficult for her and her guests to come and go. Additionally, the tenant described having items removed from her balcony without her permission, numerous trades people coming and going from the apartment, work being performed after 5:00 P.M., and no notice that the renovations were being done. The tenant said that when she first moved into the rental unit, she thought the building was simply being cleaned and she was not informed of the magnitude of the work to be performed.

The landlord disputed the tenant's desire for a retroactive reduction in rent. The landlord explained that all tenants in the building were made aware of the repairs to the building, that the repairs were both necessary and reasonable, and that work on the building did not actually begin until January 2017. Therefore the tenant had no basis to a claim

starting in October 2016. The landlord said that all tenants were informed of the work by way of notices being placed in their mail box, and by way of posting notices in the building's lobby. The landlord acknowledged that the tenant was without the use of her balcony, but said it was only for 1 month. She said that tenants were informed on July 14, 2017 that their items were to be removed from the balcony as work was to begin on July 18, 2017. Specifically, the landlord explained that the contractors were power washing, painting and caulking the balcony and painting the hand railings. The building manager said that the tenant was only without the use of the balcony from July 18, 2017 to August 15, 2017 and again for an afternoon in September 2017 when she and an engineer required a second inspection of the balcony. The tenant disputed this, arguing that she was without the use of her balcony for July, August and part of September 2017.

In addition to the work on the balconies, the landlord explained that the swimming pool was closed for 2 weeks in August 2017, but this was done for safety reasons. Finally, the landlord noted that at all times during the construction 3 entry points to the building were accessible, that the tenants and their guests always had access to the intercom system, that no work was performed after 5:00 P.M., and that the driveway was a no stopping zone reserved for ambulances and the fire department. Therefore any alleged loss the tenant suffered as a result of being unable to access the roundabout should be dismissed.

Analysis

The tenant presented oral testimony during the hearing that she was seeking a reduction in rent due to the ongoing construction in the rental building. She explained that this work has left her without a balcony for July, August and part of September 2017, without the use of a swimming pool for 2 weeks in August 2017, without access to the front entrance and roundabout and because of ongoing disruptions from the many contractors who were coming and going from the building.

The tenant seeks compensation for loss in the value of the tenancy due to the ongoing construction. Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is

also read in conjunction with paragraph 65 (1)(f) of the *Act,* which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

The landlord acknowledged that that the tenant was unable to use the balcony of the rental unit while the exterior construction was being performed and that the swimming pool was inaccessible for 2 weeks in August. The parties were conflicted on the dates that this construction took place; however, both agree that it took place starting in July 2017. I find that the tenant was entitled to use of the balcony under the tenancy agreement. I find the tenant has demonstrated to the extent required that she lost access to her balcony, a service and facility that the landlord committed to provide to her when she entered into this tenancy agreement for at least the time period of July 14 to August 15, 2017.

Residential Tenancy Policy Guideline 16 provides guidance in determining the value of the damage or loss under such circumstances. The tenant suggested an amount of $50.00 per month for the entirety of her tenancy. The tenant provided little evidence regarding the loss of use of the balcony. The tenant did not give evidence concerning the size of the balcony, the frequency of its use, or the impact its loss had on her. I find the tenant has not shown on a balance of probabilities that the loss of use of the balcony had a significant effect on her enjoyment of the rental unit for the time period she has claimed. I find that the suggestion of $50.00 per month for the entire period of the tenancy, to be excessive under the circumstances.

It is undisputed that the tenant lost the use of the balcony due to the landlord's construction work from July 14 to August 15, 2017, along with the use of the swimming pool for 2 weeks in August 2017. Under the circumstances, I am issuing a monetary award which reflects that the tenant did suffer loss in the value of the tenancy agreement. Based on the evidence before me I find that the loss was not significant, had no major impact on the tenant's daily routine and the tenant was able to enjoy the rest of the rental unit. Under the circumstances, I find that the monetary award should reflect a smaller portion of the monthly rent and a monetary award of $50.00 for loss of the balcony and use of the swimming pool for the time period in July and August 2017.

In coming to this determination, I have also taken into consideration that much of the rental period for which the tenant is claiming entitlement to a monetary award that work was not being performed on her unit. The tenant was unable to provide adequate detail in her testimony to quantify the loss she suffered as a result of being deprived of the roundabout or the ongoing presence of construction workers. Furthermore, the landlord explained that the tenant was always able to access the rental building from 3 different

entrances and always had access to the intercom. For these reasons, I deny the tenant an award related to the loss of these facilities.

As the tenant was partially successful in her application, the tenant is entitled to recovery of the $100.00 filing fee for this application.

Conclusion

I issue a monetary order in the tenant's favour in the amount of $150.00 which includes the loss of the value of the tenancy to the date of the hearing and the filing fee for her application.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: October 12, 2017

Residential Tenancy Branch