Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWM Alliance Real Estate Group Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, PSF, RP, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"), filed on January 18, 2019. The tenant seeks the following remedies under the Act:

1. compensation for loss of heat and cooling;
2. an order that the landlord comply with the Act, regulations or the tenancy agreement;
3. an order to provide services required by the tenancy agreement or the Act;
4. an order for regular repairs; and,
5. compensation for the filing fee.

A dispute resolution hearing was convened on March 1, 2019 and the landlord's agent and two witnesses, and the tenant, attended the hearing. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties did not raise any issues with respect to the service of documentary evidence, save for one required document that I will address below in the preliminary issue.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Preliminary Issue: Detailed Calculation of Monetary Claim

The tenant referred me to a list of how his claim was calculated. It was an abbreviated list of items totalling approximately $2,000.00. The document was titled "Simpleitems4and5calculations (Calculations)."

However, the landlord testified that they did not receive this breakdown, nor were they served any receipts or related documentation supporting the amounts claimed. The tenant did not provide any evidence proving that he did, in fact, serve the landlord with the calculation of how his claim was calculated.

While the application was filed on January 18, 2019, the tenant only submitted a Monetary Order Worksheet on February 14, 2019, almost a full month after he filed his application. The landlord stated that they did not receive the Monetary Order Worksheet, which, I note, calculated the claim totalling approximately $5,000.00.

I note that Rule 2.5 "Documents that must be submitted with an Application for Dispute Resolution" of the *Rules of Procedure,* under the Act, requires that an applicant submit "a *detailed* calculation of any monetary claim being made" at the same time as the application is submitted (my emphasis).

Certainly, while there is flexibility within the *Rules of Procedure* that might allow the submission of required evidence after an application is made, a detailed calculation of a claim—especially for a claim in the amount of $5,000.00—must be served on the respondent.

In this case, the tenant was unable to establish pursuant to Rule 3.5 that the landlord was served with a detailed calculation of any monetary claim being made. As such, the tenant's claim for compensation is dismissed with leave to reapply.

Issues to be Decided

1. Is the tenant entitled to an order that the landlord comply with the Act, regulations or the tenancy agreement?
2. Is the tenant entitled to an order to provide services required by the tenancy agreement or the Act?
3. Is the tenant entitled to an order for regular repairs?
4. Is the tenant entitled to compensation for the filing fee?

Background and Evidence

I note at the outset of this hearing and decision is the vast quantity of documentary evidence submitted by both parties. And, while I reviewed all evidence in advance of the hearing, I advised the parties that they would be required to refer me to any specific documentary evidence that they wished me to consider in this decision.

The tenant testified that the tenancy commenced in November 2017 (the written tenancy agreement submitted into evidence indicates a tenancy start date of November 2018, though the security deposit was apparently paid in advance on September 21, 2017, indicating an error on the date), and monthly rent is $2,704.32, which includes a parking fee of $75.00. The security deposit was $1,286.36. Heat is provided and included in the rent.

The tenant testified and provided documentary evidence primarily in the form of written (including e-mail) communication, that he was without heat or AC for a period of 118 days over a period of 10 months. This period began in February 2018 and is currently still ongoing. The tenant has had to use a portable heater when necessary and has incurred extra hydro costs as a result. He was also without AC during the summer, which has forced him to open the windows. Regrettably, the rental unit is in a building next to a busy, noisy highway.

He has also experienced hot water issues with the hot water being unavailable for a period of 12 days over a period of six months. The dates of hot water outages were November 10, 2017, January 15-19, February 7-14, and April 4, 2018.

He and his family further experienced a smoking issue from November 2017 until June 11, 2018, during which a neighbouring tenant apparently smoked, which entered the tenant's young daughter's bedroom. (The landlord testified that it turned out that it was incense, not smoke.)

The tenant testified that there was a refrigerant leak in the AC that occurred on a few occasions. He was concerned about whether the gas leak posed a health hazard to his family.

In their testimony, the landlord's agents (referred to collectively and individually as "the landlord") testified, and reiterated several times, that "every time we were contacted, we responded" promptly and in a timely manner.

Regarding the heat, they testified that every rental unit has heat, and sometimes the heating systems breaks down. One of the landlord's witnesses commented that the "equipment breaks down more often than desired." They explained that the heating is owned and maintained by Fortis, and that they have basically nothing to do with it. However, they still contact the mechanical repair people whenever there is an issue with the heating.

The landlord acknowledged that heat was out at time, but than whenever it was, the landlord supplied portable heaters to the residents, but that the tenant chose to obtain his own heater. As for the increased hydro expenses, the landlord offered to pay for any extra hydro if a tenant submitted BC Hydro bills reflecting an increased cost. "We will reimburse if [there is] extra heat," they remarked.

Regarding the gas leak, the leak was behind the wall, and never exposed any occupant in the rental unit. The gas is, according to the landlord, is not harmful to humans.

The landlord recognised that it is a non-smoking building, but that they cannot control if someone does smoke. The best they can do is identify the culprit and send a warning letter. In this case, they determined that the smoke of which the tenant complained was incense being burned by a nearby occupant. Warning were sent, and incense use waned.

The parties briefly (unfortunately due to the time constraints of the hearing) about an issue involving a bike room. The tenant was shown a bike room when he first viewed the rental unit and the premises, but it was never mentioned whether there was a cost or not associated with using the bike room. The tenant assumed that use of the bike room was included in the rent. He found out later, however, that it is $50.00 a bike to use the room (he did not specify whether this was $50.00 per month or on some other basis.) Correspondence submitted by the landlord indicated that the cost is $50.00 per month per stall.

In their final submission the landlord emphasized that "we've taken seriously every matter reported." They have, from their perspective, fulfilled their legal obligations as a landlord. They have been prompt in their responses to the tenant's concerns.

In this final submission, the tenant conveyed his appreciation for the landlord's responses to his concerns, but "I still want heat for my family."

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Application for Order that Landlord Comply with Act

Under section 62(3) of the Act, an arbitrator may "make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

The tenant's application indicates that he wishes to obtain information from the landlord regarding whether the gas leak from the AC is harmful or not. He seeks an assurance that the landlord is providing a safe environment for his family.

Section 32(1) of the Act states that

> 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.

The landlord's agent and witnesses testified that the gas that leaked behind the wall is not harmful. However, there is nothing in the landlord's submissions or evidence to indicate that the refrigerant gas (R-410A) is, in fact, harmless. The landlord's cover letter refers to a Fortis BC document referring to the gas' safety, but there did not appear to be any such evidence in the 146-page document submitted.

Quite the opposite: the safety data sheet submitted by the landlord states that overexposure to R-410A gas "may cause dizziness and loss of concentration." At higher levels, even worse may occur. I find the landlord's testimony and submissions regarding the potential risk from R-410A to be less than truthful. Or, misinformed at best.

That having been said, the leak apparently occurred behind a closed off wall, from which the gas could not escape. The tenant did not submit any documentary medical evidence linking the gas leaks to any resulting medical or physical harm to either him or his family. As such, while the gas itself is not harmless as the landlord suggested, the tenant and his family never appeared to be at risk, nor is there any evidence that the tenant and his family are at present risk.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for an order under section 62(3) of the Act. This aspect of his claim is dismissed without leave to reapply.

2. Application for Order that Landlord Provide Services Required by Tenancy Agreement or the Act

The tenant's application appears to suggest that the tenant wants to be able to use the bike room without having to pay a fee. Nowhere in the application does the tenant specifically state what is being sought, however.

Based on the limited testimony of both parties, the tenant was never entirely clear from the very start of the tenancy—even when he first viewed the property—whether the bike room was free or not. There is no evidence to suggest that the bike room would be provided free of charge as part of the tenancy, nor does the tenancy agreement shed any light on this matter. The Act does not require that a landlord provide parking or storage for bicycles, and the tenancy agreement does not include bike parking or storage as part of the rent. That the tenant never obtained clarification on the bike room when he decided to rent is not a burden that must shift to the landlord.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for an order under section 62 of the Act. This aspect of his claim is dismissed without leave to reapply.

3. Application for Order for Regular Repairs

The tenant's application states that "There is still unfinished repair from last year in my bedroom. It is cosmetic, but it shows lack of management and breach in contract from [landlord] to ignore it even I followed up a few times."

Specifically, the cosmetic repair has to do with painting. The landlord painted over a repair to the wall but explained that the paint does not match previous paint. The tenant testified that the rental unit was never painted to begin with. The tenant did not provide any high resolution colour photographs to establish the extent or severity of the cosmetic repairs required.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to provide any evidence that the landlord repaired the wall such that further repairs are required.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving his claim for an order against the landlord for regular repairs. I dismiss this aspect of his application without leave to reapply.

4. Compensation for Filing Fee

I decline to award compensation for the filing fee under section 72 of the Act.

Conclusion

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 4, 2019

Residential Tenancy Branch