Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEWPORT APARTMENTS LTD INC NO. BC1115509 and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI FFT OLC PSF RR

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act; and*
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

LV and TK appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'). The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2013. The tenant is currently paying monthly rent of $803.00, and an additional $30.00 per month for parking. The tenant paid a $362.50 security deposit at the beginning of this tenancy, which is still held by the landlord.

The tenant applied for a determination regarding a rent increase, specifically the parking fees which increased from $10.00 per month to $30.00 per month as of June 1, 2018. The monthly parking is not a term in the written tenancy agreement, although both parties confirmed this increase and monthly fee. The tenant submitted that this increase exceeds the maximum allowable amount for rent increases under the *Act.* The tenant is agreeable to a 4% increase of $4.00, and is applying for a reimbursement of $16.00 per month for the period of June 1, 2018 through to January 31, 2019 for a total of $128.00 ($16 * 8 months) plus reimbursement for any amounts paid for the period thereafter. The tenant is requesting that the monthly parking be set at $14.00. The tenant provided

a copy of the tenancy agreement as well as the letter dated April 4, 2018 notifying the tenant of the rate increase in his evidentiary materials.

The tenant is also seeking a rent reduction of $200.00 for the period starting July 1, 2018 until January 31, 2019 for a total monetary order of $1,400.00, plus an ongoing rent reduction of $200.00 for the loss of access to facilities.

The tenant testified that he had lost substantial use of common areas and facilities in his complex since July of 2018 since the landlord had made many changes to the building. The tenant testified that these losses have meant his quality of life has gone down as the common areas are an extension of his personal space. The tenant used these common areas extensively, and the loss of this space was profound for the tenant.

The landlord does not dispute the changes made to the building, but the landlord disputes the $200.00 rent reduction requested by the tenant. The landlord testified that these changes are upgrades undertaken in order to increase the quality and value to the tenants, rather than decrease their access to facilities. The landlord testified that the renovations and changes were done in accordance with bylaws, and the landlord had not breached or contravened any *Acts* or laws.

The changes include the loss of the visitor parking area, which is now rented out to residents for a fee. The tenant testified that this loss is a great one as he would have groceries and medication delivered to him, and with the loss of the parking spaces, he now had to meet the delivery person. The tenant testified that his friends would use these spaces, too. The tenant further testified that the landlord has breached bylaws by removing these spaces. In addition to the rate reduction, the tenant is also requesting that the landlord restore the visitor parking stalls. The landlord testified in the hearing that the landlord had obtained a parking variance permit in order to undertake this change. The landlord read a letter in the hearing, dated September 12, 2018, which states that the municipality has approved the variance application, which allowed the landlord to rent out the parking stalls. The landlord testified that they had done their due diligence to ensure that they were in compliance, and that the parking stalls were required to accommodate the additional rental accommodations. The landlord further testified that they had hired an architect and also a parking consultant before obtaining these approvals.

The tenant testified that with the additional 2 rental units, the tenants now share 2 washers and 2 dryers. The tenant testified that there is also a hole in the wall, which

meant the tenant had to wear additional clothes and be exposed to the elements while doing his laundry. The tenant testified that the foyer is now been reduced to the size of a corridor, and the chairs have been removed.

The landlord testified that for the size of the complex, the number of washers and dryers is still sufficient to meet the needs of the residents. The landlord testified that the renovations are still ongoing, and once complete the space would be a lot nicer, including a nicer lobby area. The landlord testified that before the renovations, a lot of unused space was not being utilized, including a large storage area which contained bathrooms and kitchens.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

> ***7*** *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
>
> *(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Sections 34 to 36 of the *Act* speaks to rent increases.

Rent increases

> ***34*** *A landlord must not increase rent except in accordance with this Part.*

Timing and notice of rent increases

> ***35*** *(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*
>
> *(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the manufactured home site;*
>
> *(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*
>
> *(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*
>
> *(3) A notice of a rent increase must be in the approved form.*
>
> *(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.*

Amount of rent increase

> ***36*** *(1) A landlord may impose a rent increase only up to the amount*
>
> *(a) calculated in accordance with the regulations,*
>
> *(b) ordered by the director on an application under subsection (3), or*

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-11.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In this matter, the tenant applied to dispute a rent increase. I find that the increase imposed by the landlord was an increase to the monthly parking rate, which is not included in the monthly rent as set out in the tenancy agreement. As this parking rate is not a part of the monthly rent, section 36 of the *Act* is not applicable to the parking rate increase. Accordingly, I dismiss the tenant's application for a determination regarding a rent increase without leave to reapply.

The tenant also applied for the landlord to restore the visitor parking stalls, which the landlord testified was done after obtaining an order allowing the landlord to do so. I am not satisfied that the tenant had provided sufficient evidence to support that the landlord had failed to comply with the *Act*, tenancy agreement, or any bylaws in removing these parking stalls, and accordingly I dismiss this portion of the tenant's application with leave to reapply.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant's application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 27 Terminating or restricting services or facilities, states as follows,

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find that for the purposes of this matter pursuant to Section 27(2)(b) and 65 that laundry facilities and common areas are considered a qualifying **service or facility** stipulated in the **Definitions** of the *Act*.

I find the evidence is undisputed that the tenant has experienced a reduction in the amount of space that was once available to him. I also find that the tenant's comfort has been impacted since the beginning of these upgrades in July of 2018. In considering whether the tenant is entitled to the monetary order for a reduction in rent, I must determine whether there has been a reduction in the value of the tenancy agreement.

I find the *Act* clearly states that on termination of a service or facility the appropriate remedial rent reduction amount should be "equivalent" to *the reduction in the value of the tenancy agreement.* I find that the requisite calculation prescribed in 27(2)(b) is one predicated on the question of, "what is the reduction in the *value* of the tenancy agreement resulting from the absence of the facility"? Or, "by what amount is the *value* of the tenancy agreement (rent) reduced in absence of facility"?

I have considered the *Act* definitions of**, "rent", "service or facility",** and **"tenancy agreement"**, all of which I find comprises the totality of the tenancy agreement. I find that the landlord has not removed any facilities that are included in the tenant's rent as stated in the written tenancy agreement.

I have also considered Section 32 of the *Act,* which outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

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.

Although I am sympathetic to the tenant about the discomfort he has experienced during these renovations, I accept the testimony of the landlord that the landlord is undertaking these renovations in order to upgrade the building. I do not find that the landlord has breached any portion of the tenancy agreement or *Act*. In fact, I find that the landlord's has a duty to maintain property in order to comply with section 32 of the *Act* as stated above.

I find that the tenant has not provided sufficient evidence to support the value of the loss claimed. On this basis, I dismiss the tenant's application for a rent reduction without leave to reapply.

Lastly, the tenant requested an order for the landlord to comply with the *Act* and tenancy agreement, and provide services or facilities as agreed upon. I am not satisfied that the tenant had provided sufficient evidence to support that the landlord has failed to comply with the Act, or failed to provide services or facilities as agreed upon. On this basis, I dismiss this portion of the tenant's application with leave to reapply.

As the tenant was not successful in his application, the tenant's application to recover the filing fee is dismissed without leave to reapply.

Conclusion

The tenant's application to restore the visitor parking stalls, facilities as agreed upon, and for the landlord to comply with the *Act* or tenancy agreement, is dismissed with leave to reapply.

The remaining portions of the tenant's application are dismissed 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 *Residential Tenancy Act*.

Dated: March 28, 2019

Residential Tenancy Branch