Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Parkland Towers Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, PSF, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the Landlord to comply - Section 62;
2. An Order for the provision of facilities and services - Section 65;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord requests that any monetary order that may be issued not include the second named Respondent GS as this person is only an employee. The Tenant consents to this person not being named in any monetary order that may be issued.

The Tenant confirms that the Landlord has restored the bathroom tub and shower and that these repairs were the subject of the claims for the orders for compliance and provision of facility and services. Given this confirmation I find that these orders are no longer required and I dismiss these claims.

Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on February 28, 2003. At the outset of the tenancy the Landlord collected $462.00 as a security deposit. Rent of $1,131.00 is payable on the first day of each month. The rental unit came with a bathtub and shower. At some time prior to November 29, 2018 a flood occurred in a unit several floors above the Tenant's unit that affected the Tenant's unit, specifically the bathtub and shower. On December 3, 2018 repairs were commenced with the Tenant losing use of its bathtub and shower. During the time that the Tenant was not able to use its own bathtub and shower the Landlord provided access to a vacant unit on the first floor for the Tenant and other affected tenants to use the bathtub and shower in the vacant unit (the "alternate bathroom").

The Tenant states that after painting the Tenant had use of her own bathroom and shower by March 7, 2019. The Landlord's Witness states that he cannot recall many specifics and that the restoration was completed on February 20, 2019. The Witness states that it gave oral evidence at a different hearing on the same building with the same claim from another tenant. The Landlord provided the file number for this other claim. I note that this decision is dated March 18, 2019.

The Tenant states that access to the alternate bathroom was always available when needed by the Tenant. The Tenant states however that the use of the alternate bathroom was inconvenient and was not kept clean. The Tenant states that the Landlord was informed of the uncleanliness on or about the end of December 2018. The Tenant states that during this time the Landlord or its representatives did not communicate with the Tenant about updates or the status for completion and only referred the Tenant to the remediation company. The Tenant states that between November 2018 and February 2019 the Tenant received monthly notices that gave only information about who was coming to the unit and what repairs were being done. The

Tenant states that the notices never gave any estimated duration time for the completion of the repairs to the unit.

The Landlord states that the flood was not due to the fault of the Landlord. The Landlord states that they called their insurance provider and a restoration company and followed their direction on repairs. The Landlord states that they believed it was better for tenants to communicate directly with the restoration company. The Landlord states that the alternate bathroom was cleaned at the outset, that the Landlord checked the alternate bathroom at least 2 to 3 times per week and that the Landlord's staff cleaned the alternate bathroom twice a month. The Landlord states that while approximately 14 units were affected by the flood only four units required access to the alternate bathroom. The Landlord states that the tenancy agreement advises the tenants to carry their own insurance and that the Landlord's insurance does not cover costs of alternate accommodation for tenants.

The Landlord argues that the full use of a bathroom is not as valuable as a kitchen and that there are other valuable uses to the unit such as the view. The Landlord argues that the Tenant has not substantiated that the Tenant suffered any loss or damage or that the Landlord failed in its obligations to repair and maintain the unit. The Landlord argues further that the Tenant only suffered a minor inconvenience. The Landlord refers to a decision dealing with a claim from one of the other affected tenants that was dismissed and argues that although not bound by this decision it should not be distinguished from the claim at hand as it considers the same facts.

The Tenant states that she values the use of a bathtub and a shower equally to the use of a kitchen and estimates this value at approximately 40% of the total rent paid. The Tenant states that during the month of December 2018 the Tenant became ill with pneumonia and that having to go to the alternate bathroom was an added inconvenience during her illness. The Tenant states that she does not know how many other tenants used the same alternate bathroom and that the Tenant only knows of one

other tenant that used it. The Tenant states that this other tenant also commented on the unclean alternate bathroom. The Tenant states that one tenant who refused to use the alternate bathroom was provided access to a private shower.

The Landlord's Witness, representing the restoration company, states that the Landlord made its insurance claim in October 2018, that work commenced by the restoration company in early November 2018, that lead was determined to be present in all the affected units, and that in its opinion there was not much delay to the completion of the restoration, including time for drying and testing. The Witness states that the work to all of the units could have been done much quicker if they were able to work on all the units at the same time but that they had to work on the units individually as the tenants did not move in order to enable an earlier resolution. The Witness states that all the demolition work was completed by early January 2019 and by mid-January 2019 the insurance company approved the continuation of the work that was ultimately finished on February 20, 2019. The Witness states that due to the holiday season and individual work on the units the length of the repairs was reasonable. The Witness states that its evidence is based on memory and that specifics cannot be recalled. The Witness states that it believes a total of 10 units required restoration work.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Section 1(a) and (b) of the Act provides that a **"service or facility"** provided or agreed to be provided by the landlord to the tenant of a rental unit includes appliances and furnishings or utilities and related services.

Although a bathtub and shower are not set out to be included as a service or facility, I consider that this definition does not exclude other items not specifically listed. I also consider that a bathtub and shower can be included as a facility akin to appliances or furnishings or as a delivery mechanism related to the provision of a water utility. Based on the undisputed evidence of the Tenant I find that the tenancy agreement and therefore the rent paid for the unit, included the provision of a shower and bathtub. Given the Tenant's direct evidence of when the use of the bath and shower were restored for full use and considering the Witness evidence of an unreliable memory, I find on a balance of probabilities that the Tenant lost use of the shower and bathtub from the agreed date of December 3, 2018 to March 7, 2019.

Based on the Landlord's evidence that the alternate bathroom was only cleaned twice a month and used by a number of tenants, I find that the Landlord provided a less than desirable replacement for the Tenant's loss of its own private bathroom facilities. Although the Landlord argues that they are not liable for any loss to the Tenant as they also acted within a reasonable timeline to remediate the bathroom, I consider the Witness evidence that the restoration could have occurred much sooner if the units could have been done all at the same time. Although the Landlord's evidence infers that that the units had to be repaired on piece meal basis due to the lack of insurance coverage for alternate accommodations, I consider the Landlord's evidence that the Tenant was not required to carry its own insurance. Further, there is no evidence that a tenant's insurance could provide alternate accommodation compensation for structural damage or damage to fixtures caused by another person in another unit. I consider that the Landlord made the decision to carry out the work as done based on the Landlord's own financial and insurance considerations and in doing so unduly delayed the restoration of the bathroom facilities.

I note that the other decision referred to by the Landlord only considers a breach of the Act and does not consider a breach of the tenancy agreement or a loss of facilities

under the terms of the tenancy agreement. I also note that the other decision does not set out any evidence from the Witness that the restoration could have been done much sooner had it not been done on a piece meal basis. As a result I find on a balance of probabilities that the length of time taken to restore use of the bathtub and shower and the corresponding loss to the Tenant was caused by the slow response and therefore neglect of the Landlord.

Given the Tenant's evidence that despite the lack of cleanliness of the alternate bathroom and having to leave a personal space to carry out a personal activity to shower or bath, and in particular while experiencing an illness that I do not consider to be outside the realm of foreseeability when it comes to the use of living accommodation, I find that the Tenant took more than reasonable steps to mitigate its losses.

Section 65(1) of the Act provides that, without limiting the general authority in section 62 (3) if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make an order, inter alia, that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. Given the undisputed evidence of the full rent being paid while the Tenant did not have use of the bathtub and shower, I find that the Tenant has substantiated both a loss and a reduction in the value of the tenancy. However, as the Tenant still had use of the rest of the unit, including some use of the bathroom, I consider that the Tenant's claim for an approximate 40% percent loss in value has not been substantiated for the months of January and February 2019. I find therefore that the Tenant is only entitled to a nominal sum of $100.00 per month for a retroactive reduction in rent for these two months. Based on the Tenant's undisputed evidence that she had pneumonia for the month of December 2018 and as I consider that in these circumstances the value of a person's own bathtub and shower become greater, I find that the Tenant suffered a greater loss for December 2018. However as there is no evidence that the Landlord was informed of the Tenant's illness and therefore provided no opportunity to better accommodate the Tenant while ill, I find that the Tenant has

only substantiated a nominal amount for a retroactive reduction in rent for December 2018 of $100.00.

As the Tenant's application has met with some success I find that the Tenant is also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$400.00**. The Tenant may deduct this amount from future rent payable.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$400.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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 Act.

Dated: May 13, 2019

Residential Tenancy Branch