Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CARMA COURT APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, FFT

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord was represented by an agent. Both tenants attended the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and the landlord confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenants confirmed, that the landlord served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the tenant entitled to an order that:

1) the Notice be cancelled;
2) repairs be done; and
3) they be reimbursed their filing fees?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Tenant DS (then named "DD") and the landlord entered into a written tenancy agreement starting February 1, 2019. Monthly rent is currently $695.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of $282.50. The landlord still retains this deposit.

It is common ground between the parties that the bathroom of the rental unit requires repairs. However, the parties disagree on whether it is necessary to conduct asbestos testing prior to making these repairs. The tenants believe that testing is required. The landlord disagrees.

On July 23, 2018, the parties appeared before an arbitrator of the Residential Tenancy Branch (the "**RTB**") to address the issue of repairs to the rental unit bathroom. At the hearing the parties entered into the following agreement, which was documented in a written decision (the "**Settlement**") by the presiding arbitrator:

> Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:
>
> - The Landlord will have an initial site visit to identify the scope of repairs needed in the bathroom (shower), and the leak in the kitchen sink.
> - The Landlord agrees to have the materials that will be demolished, disrupted, or disturbed, tested by a certified asbestos testing company.
> - Once asbestos testing has been done, and the Landlord has provided the Tenant with documentary proof that either no asbestos remediation is required, or that it has been sufficiently remediated, the Landlord agrees to begin repairs to the shower and the kitchen sink in a timely manner.
> - This mutual agreement only settles the repairs the Tenants have asked for.
>
> The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter. Parties are encouraged to try to work together on any remaining issues.

Tenant MS testified that, within days of entering into this agreement, the landlord's agent contacted him and advised him that the landlord would not be conducting the asbestos testing.

The landlord's agent disagreed that she or another agent called the tenant "within days", but agreed that it was the landlord's position that it was not required to conduct such testing. She testified that she had called the municipality, as well as Worksafe BC and other entities, all of whom advised her that it was not mandatory to conduct asbestos testing when making the repairs at issue in this hearing. The landlord's agent testified that the bathroom was last retiled in "the early 2000s" and that asbestos ceased to be used in construction products in "the 80s". The landlord provided no documentary evidence to support any part of these claims (such as correspondence from the various entities she communicated with, or expert reports regarding the use or subsequent banning of asbestos products).

The landlord's agent argued that since asbestos testing is not mandatory, the landlord is not obligated to conduct an asbestos test as it agreed to in the prior hearing.

The landlord testified that it attempted to make repairs to the tenants' bathroom on at least one occasion, but that access to the rental unit was refused by the tenants. The tenants testified that they refused access because the asbestos testing had not been completed.

On April 11, 2019, the landlord issued the Notice, with an effective move-out date of May 31, 2019. The grounds to end the tenancy cited in that Notice were:

1) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and
2) the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord's agent stated that by their refusing entry into the rental unit to repair the bathroom, the tenants have put the landlord's property at significant risk. Additionally, the landlord's agent testified that the tenants and the landlord have had a number of ongoing disputes regarding:

1) the hours of operation of the laundry room;
2) a monthly rent increase of $100.00; and
3) where the tenant may park his vehicle.

The landlord argues that these disputes constitute an unreasonable disturbance to the landlord, and are valid grounds for ending the tenancy. The landlord's agent testified that her dealings with the tenants have caused her a great deal of stress. She characterized the tenants' conduct as having a "vendetta" against the landlord.

As stated above, the tenants do not deny refusing entry to the rental unit. However, they deny that they have unreasonably disturbed the landlord through their conduct. The do not dispute that there have been disagreements between the landlord and the tenants. However, they testified that the basis for these disagreements is that the landlord's property managers, who took over as property managers in 2017, are going back on agreements that the tenants had made with the prior property manager.

I note that this application is not concerned with the adjudication of such disputes (amount of monthly rent, parking, and access to facilities). As such, I decline to describe the disputes in further detail, as the details are not relevant to my decision.

Analysis

Asbestos Testing

The parties agree that the bathroom of the rental unit is in need of repair. Neither party provided evidence regarding what repairs are specifically required. However, based on the testimony of the parties, I do understand that the scope of repairs is in dispute. As such, I will not consider what repairs are to be made. Rather, I will consider whether, prior to making these repairs, testing for asbestos must be conducted.

The landlord argued that asbestos testing is not mandatory in cases such as this. She provided no evidence in support of this assertion. Without such evidence I cannot determine if she is correct in her statement. However, I find that determining the necessity of asbestos testing is not relevant to determining this matter.

The parties entered into the Settlement. In it, the parties acknowledged that they "understood the nature of this full and final settlement of this matter". The Settlement was made in accordance with section 63 of the Act, which specifically empowers a presiding arbitrator to assist the parties to settle their dispute and record the settlement in the form of a written decision.

I find that the Settlement is a binding agreement made between the landlord and the tenants. As such, the parties are required to abide by the terms of the agreement. In the Settlement, the landlord agreed to conduct asbestos testing. It is irrelevant that, subsequent to entering into the Settlement, the landlord allegedly determined that asbestos testing is not mandated by a municipality or other authority (I make no findings as to whether this is the case or not). That a term of the Settlement is not mandated by law does not grant the landlord permission to ignore it.

I find that the landlord is bound by the terms of the Settlement, and must comply with all of its terms, in full.

The landlord has demonstrated an unwillingness to comply with the written direction of the RTB. Accordingly, in order to ensure the landlord's compliance with the terms of the Settlement, I order, pursuant to section 62(3) of the Act, that:

1) if the landlord has not complied with the terms of the Settlement by July 1, 2019, the tenants' monthly rent is reduced by $70.00 (roughly 10%) until such time as the landlord has complied with the Settlement, or until the terms set out below apply;
2) if the landlord has not complied with the terms of the Settlement by October 1, 2019, the tenants' monthly rent is reduced by $175.00 (roughly 25%) until such time as the landlord has complied with the Settlement, or until the term set out below applies;
3) if the landlord has not complied with the terms of the Settlement by January 1, 2020, the tenants' monthly rent is reduced by $350.00 (roughly 50%) until such time as the landlord has complied with the Settlement.

The landlord must understand that compliance with the Settlement is not optional. Rather, the Settlement has the full force of a decision of the RTB, and must be complied with as such. If the landlord does not comply with the Settlement by the dates set out above, the tenants may withhold from their rent payments the amounts specified above. They do not need to make an application to the RTB to do so.

Notice to End Tenancy

There is insufficient evidence before me to determine that a delay in making repairs to the bathroom has put the landlord's property at significant risk. I am unsure as to the extent of the repairs needed in the bathroom. And what effect on the landlord's property the lack of repairs might have. The landlord's agent alluded to water damage, but did not elaborate. In any event, even if I found that I find that a delay in making repairs to

the bathroom has put the landlord's property at significant risk, I do not find that the tenants are responsible for such a delay. I find that their refusal to allow the landlord access to the rental unit to conduct repairs was warranted, in light of the Settlement. I find that any delay in completing repairs to the rental unit's bathroom was caused by the landlord's non-compliance with the Settlement. As such, I find that the delay in making repairs is not a valid basis for ending the tenancy.

I do not find that the disputes between the landlord and the tenants rise to the level of unreasonable disturbances. Disputes are commonplace between landlords and tenants and their existence is not a proper basis to end a tenancy. I accept that such disputes may have caused the landlord's agent stress; however, such stress is not unreasonable, as it reasonably expected for a property manager to encounter such disputes, and resolve them. I have been presented with no evidence which would lead me to conclude that the disputes over laundry hours, rent, or parking are anything other than typical disputes between a landlord and a tenant. As such, I find that their existence is not a valid basis to end the tenancy.

Based on the foregoing, I find that the Notice is invalid, and I order it cancelled and of no effect.

As the tenants have been successful in their application, I order that the landlord repay them their filing fee ($100.00). Pursuant to section 72(2) of the Act, the tenants may deduct $100.00 from their next monthly rent payment.

Conclusion

Pursuant to section 47 of the Act, I order that the Notice is cancelled.

Pursuant to section 62 of the Act, I order that the landlord comply with the terms of the Settlement, and, if it fails to do so, that the tenants' monthly rent be reduced as indicated above.

Pursuant to section 72(2) of the Act, I order that the tenants may deduct $100.00 from their next monthly rent payment.

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: May 22, 2019

Residential Tenancy Branch