



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP RR

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62; and,
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Preliminary Matter: Admissibility of Unserved Evidence from the Landlord

Prior to the hearing the landlord submitted documentary evidence to the Residential Tenancy Branch which not served on the tenant.

Residential Tenancy Branch Rules of Procedure, sections 3.2 and 3.3 states that:

3.2 Evidence relating to an early end to a tenancy

When a landlord is seeking an early end to the tenancy, the landlord must submit all evidence with the Application for Dispute Resolution, or, when applying using the Online Application for Dispute Resolution, the next day. All evidence to be relied on at the hearing must be served on the respondent with the Notice of Dispute Resolution Proceeding Package described in Rule 3.1.

3.3 Evidence for cross-Application for Dispute Resolution

Evidence supporting a cross-application must:

- be submitted at the same time as the application is submitted, or within three days of submitting an Online Application for Dispute Resolution;
- be served on the other party at the same time as the Notice of Dispute Resolution Proceeding Package for the cross-application is served; and
- be received by the other party and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

The landlords did not serve his undisclosed evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. I find that the admission of this nondisclosed evidence would prejudice the tenant and result in a breach of the principles of natural justice. Accordingly, landlords' undisclosed evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Is the tenant entitled to an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Background and Evidence

The tenancy started on June 1, 2018. The monthly rent was \$1,600.00 and the tenant paid a \$800.00 security deposit.

The tenant complained of multiple deficiencies which reduced his quiet enjoyment of the property. The tenant complained that there a problem with the plumbing in the house. The tenant testified that the pipes would vibrate loudly making loud noises.

The landlords testified that the tenant first complained about the plumbing problems in September 2019 and they sent a plumber to address it. The landlords testified that the plumber was not able repair the problem. The tenant testified that the tenant complained about the plumbing again November and the landlord sent another plumber to the rental unit. The landlords testified that this plumber was able to repair the plumbing issue.

The tenant also complained about the lack of a walkway behind the rental unit. The tenant testified that the rental unit had pipe matting on the ground at the rear entry to they property which the tenant testified was a trip hazard. The tenant testified that he asked the landlords if he could remove the pipe matting and the landlords gave their permission. The landlord testified that the tenant asked if he could remove the matting and replace it with grass which the landlords agreed to.

The tenant said that in the Spring 2019 the area behind the house where the pipe matting had been located became very muddy and difficult to traverse so the tenant requested a sidewalk to the house. The tenant testified that the sidewalk was eventually built but he had to wait for months. The landlords testified that the sidewalk was built in March 2019 after the weather improved.

The tenant also requested access to the internet router which is shared with the rest of the property. The tenant testified that the router needs to be frequently reset to restore access after service interruptions. The landlord agreed to relocating the router to a location at which the tenant could access it.

The tenant also requested compensation for a lack of electrical access. The tenant testified that he did not have electricity supply for four to five days because an electric

breaker was tripped and the tenant did not have access to the electrical panel in the utility room. The landlords testified that the tenant only lost the use of one electric circuit, not the entire rental unit. The landlord has since provided the landlord with access to the electric panel.

Analysis

Based upon the agreement of the parties, I order that the landlord set the internet router in a location which the tenant has access so that the tenant can reset the router as needed pursuant to section 27 of the Act.

In regards to the tenant's request for a rent reduction, section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

In this matter, I find that the landlords have addressed the tenant's complaints in a reasonable and timely manner. Specifically, I find that the landlords appropriately sent a plumber to address the plumbing issues when the tenant complained in September 2018 and the landlords appropriately sent another plumber in November 2018 when the tenant complained again.

Further, I find that the landlord acted adequately by constructing the sidewalk in March 2019 when the weather permitted outdoor construction.

I find that the tenant did not provide adequate evidence of the extent of his loss of electrical services to receive compensation for this loss. The tenant did not provide any evidence as to which electric circuits failed or how that loss reduced his use of the rental unit.

For the forgoing reasons, I find that the tenant has not provided sufficient evidence to establish that the landlords breached the *Act* or that the tenants are entitled to a reduction of rent. Accordingly, I dismiss the tenant's request for compensation for a rent reduction for repairs, services or facilities agreed upon but not provided.

Conclusion

I order that the landlord set the internet router in a location which the tenant has access so that the tenant can reset the router as needed

I dismiss the tenant's request for compensation for a rent reduction for repairs, services or facilities agreed upon but not provided.

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: June 12, 2019

Residential Tenancy Branch