



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FFT

Introduction

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

- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that the tenant handed them a copy of the tenant's dispute resolution hearing package on or about August 17, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord also confirmed that they had received the tenant's written and photographic evidence well in advance of this hearing, I find that the tenant's evidence was served in accordance with section 88 of the *Act*.

The landlord testified that they sent the tenant a copy of their written and photographic evidence by registered mail on October 7, 2019. At the hearing, the landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant said that they had not received this mailing, nor had they received information from Canada Post advising that this package was available for pickup at a local postal outlet. Section 90 of the *Act*, establishes that documents sent by registered mail are deemed served on the fifth day after their mailing. On this basis, the landlord's written and photographic evidence package was deemed served to the tenant in accordance with sections 88 and 90 of the *Act* on October 12, 2019, five days before this hearing. The Residential

Tenancy Branch's (the RTB's) Rule of Procedure 3.15 establishes that the Respondent's evidence must be received within seven days of the hearing. As that has not occurred in this case, and the tenant has not actually received the landlord's written and photographic evidence, I have not taken this evidence into consideration in reaching my decision. At the hearing, I advised the landlord that they could make oral submissions with respect to the material that they had sent the tenant on October 7, 2019, and that I would consider these oral submissions.

Issues(s) to be Decided

Is the tenant entitled to a retroactive rent reduction for the loss in the value of their tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord? Should any other orders be issued with respect to this tenancy to address the issues raised by the tenant.

Background and Evidence

While I have turned my mind to all the documentary evidence provided by the tenant, including screenshots, e-mails and photographs, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here.

The parties agreed that this tenancy for a three level rental unit in a rental complex began in June 2016. Although no copy of the one-year fixed term Residential Tenancy Agreement (the Agreement) that the parties entered into was entered into written evidence by the parties, the parties agreed that the current monthly rent is set at \$1,989.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$962.50 security deposit paid when this tenancy began.

The tenant applied for a monetary award of \$3,000.00 plus the recovery of their \$100.00 filing fee. The tenant alleged that a leakage problem that began in December 2018, had led to a significant loss in the value of their tenancy, which eventually led to the landlord undertaking disruptive and messy repairs to the lower level of their rental unit in July and August 2019. While the tenant did not complete a Monetary Order Worksheet, the tenant gave sworn testimony that the amount they were seeking was for the recovery of half of their July and August 2019 rent, plus the cost of cleaning the rental unit following the repair work to their rental unit. At the hearing, the tenant stated that they were not asking for a monetary award for the loss in the value of their tenancy prior to July 2019. The tenant said that by early July repairs were underway, which rendered parts of their rental unit unusable for many weeks. The tenant also gave undisputed sworn testimony

supported by photographic evidence that parts of the rental unit were reduced to cardboard flooring from August 21-23. Holes were dug under the stairwell to repair the leak, and another leak reappeared on September 4, 2019.

The tenant also maintained that the landlord had not properly restored a section of flooring under their stairs in the lower level of this rental unit to the state it was in when this tenancy began. They described this section of flooring as a three foot by ten foot section of flooring that was now unfinished concrete, which had previously been levelled with a finished concrete layer atop the rough unfinished concrete. By contrast, the landlord described this unfinished section below the tenant's stairs as being approximately one foot by one foot in dimensions.

The tenant testified that the landlord delayed retaining cleaners to restore their rental unit to its previous condition after the landlord had completed most of the work to repair the leak. On this point, the landlord testified that the interior work was completed by August 22, 2019, but that the landlord was unable to identify a cleaner willing to restore the rental unit to its previous condition until September 9. When the tenant was contacted on September 4 or 5, the landlord said that the tenant advised them that they had already cleaned the affected portion of the rental unit. The landlord estimated that shampooing the carpets would have cost \$95.00, and less than two hours work at \$20.00 per hour would have been necessary to clean the rental unit. By contrast, the tenant said that it took them two full days to clean the rental unit and remove the dust and dirt from the floors and walls created by the landlord's repair work.

The landlord gave undisputed sworn testimony, supported by the tenant's written evidence, that the landlord initially offered the tenant an opportunity to reside in another vacant rental unit within this rental complex for the estimated two or three week period when the repairs to the tenant's rental unit would be undertaken. The tenant rejected this offer, maintaining that it would not be worth the effort involved to pack up all of their belongings from their existing rental unit and relocate to a rental unit that the tenant found less suitable for such a short period of time.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that there has been a loss in the value of their tenancy which establishes their entitlement to the issuance of a monetary award.

Section 28(b) of the *Act* establishes the following:

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(b) freedom from unreasonable disturbance;

Section 32(1) of the *Act* reads in part as follows:

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.

Sections 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 case, I find that the tenant has established on a balance of probabilities that there has been a reduction in the value of their tenancy for the two months claimed by the tenant, July and August 2019, while the landlord was undertaking necessary repairs to this rental unit. During this period, the construction was disruptive, disturbed the tenant's quiet enjoyment of the premises, and extended over a lengthy period of time.

Although I have taken into account the landlord's testimony that alternate accommodations were offered to the tenant over this period, I do not find that the tenant's refusal to avail themselves of this offer reduced the tenant's entitlement to a retroactive reduction in rent they paid during July and August 2019. Had the repair work only taken the two or three weeks that the landlord was apparently anticipating when the landlord's offer of alternate accommodation was offered, I may have accepted that the disruption was relatively short in duration and did not significantly affect the tenant

for an extended period of time. However, by the landlord's own admission the cleanup from this work was not even scheduled to be completed until September 9, 2019, and leaks were still being identified by the tenant as late as September 4, 2019. Under these circumstances I find that the tenant is entitled to a monetary award for the loss in value of their tenancy for a two month period.

In considering the extent to which the value of this tenancy was reduced, I find that the loss in use of the lower level of this rental unit is not comparable to a loss in use of more essential portions of the rental unit, such as the kitchen, living room or bedroom(s), all of which lie on the upper two levels of this rental unit. There is little evidence that the lower level of this rental unit is critical to the use of the remainder of the rental unit, as it acts primarily as a way to enter the rental unit. While dust permeated elsewhere in the building, the loss of use of areas under the stairwell and in hallways does not lead to a loss in value of the tenancy of the magnitude requested by the tenant. For these reasons, I find that the tenant is entitled to a retroactive reduction in rent of 20% of the monthly rent paid for a two month period of this tenancy, which roughly approximates the periods of July and August 2019. I order monetary awards in the tenant's favour in the amount of \$397.80 for each of the two months (i.e., $\$1,989.00 \times 20\% = \397.80).

I also allow the tenant a monetary award of \$160.00 for their work in cleaning the rental unit after the landlord's repairs. This amount entitles the tenant to 8 hours of cleaning at a rate of \$20.00 per hour, rather than the two days of cleaning that the tenant said that it took them to restore the premises to their previous condition. I find that one day of cleaning would be a more appropriate estimate of the time it would take to undertake this activity.

Although the size of the area beneath the stairwell on the lower level of this rental unit remains in dispute, there is no disagreement that the landlord has failed to restore this portion of the flooring of the rental unit to its previous condition. For this reason, I order the landlord to restore the concrete flooring in the lower level of this rental unit in the vicinity of the stairwell to its previous state of finish. If this work is not completed by November 1, 2019, the tenant will be allowed to deduct \$100.00 from their monthly rent until the month after these repairs have been completed.

Since the tenant has been successful in this application, I allow the tenant to recover their filing fee from the landlord.

Conclusion

I issue a monetary award in the tenant's favour under the following terms, which allows the tenant a retroactive rent reduction for the loss in the value of their tenancy for the months of July and August 2019, the tenant's cleaning of the rental unit following the landlord's repair work, plus the recovery of their filing fee for this application:

Item	Amount
Loss in the Value of this Tenancy for July 2019 (\$1,989.00 x 20 % = \$397.80)	\$397.80
Loss in the Value of this Tenancy for August 2019 (\$1,989.00 x 20 % = \$397.80)	397.80
Cleaning (8 hours at \$20.00 per hour = \$160.00)	160.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,055.60

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As this is an ongoing tenancy, the tenant may also choose to implement this award by reducing this amount from an upcoming monthly rent payment.

I order the landlord to restore the concrete flooring in the lower level of this rental unit in the vicinity of the stairwell to its previous state of repair. If this work is not completed by November 1, 2019, the tenant will be allowed to deduct \$100.00 from their monthly rent until the month after these repairs have been completed.

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: October 17, 2019

Residential Tenancy Branch