Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 10, 2019 (the "Application"). The Tenant applied as follows:

- For a repair order;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For compensation for monetary loss or other money owed; and
- For "other" stating that staff of the Landlord bullied the Tenant.

The Tenant filed an amendment clarifying the request for monetary compensation.

This matter came before me for a hearing November 05, 2019 and was adjourned. An Interim Decision was issued November 05, 2019. This decision should be read with the Interim Decision.

At the adjourned hearing, the Tenant appeared with the Witness. The Witness exited the conference call until required. B.B., L.R. and J.B. appeared as agents for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties and Witness provided affirmed testimony.

Both parties submitted further evidence prior to the adjourned hearing. I addressed service of the evidence. The Agents for the Landlord did not raise any issues. The Tenant testified that she received the Landlord's evidence January 3, 4 and 6, 2020 and took the position that the evidence was served late. The Tenant testified that the January 6, 2020 package contained a letter from an engineering company.

L.R. testified that the letter from the engineering company was hand delivered to the Tenant January 04, 2020. L.R. called E.H. as a witness.

E.H. is an employee of the Landlord and provided affirmed testimony. E.H. testified that she served the letter from the engineering company to the Tenant in person Saturday, January 04, 2020 at 10:51 a.m. at the rental unit. E.H. testified that she recalled the date because she was working over time to do this. The Tenant was permitted to ask E.H. questions.

Further to rule 3.15 of the Rules of Procedure (the "Rules"), the Landlord was required to serve their evidence "not less than seven days before the hearing." When calculating "not less than", the first and last days are not included further to the definition of "days" in the Rules.

The packages received by the Tenant January 3 and 4, 2020 were served in time. They are admissible.

In relation to the letter from the engineering company, I have noted the comments made by the Landlord in relation to this piece of evidence when it was uploaded to the system which state:

> …Addendum to Evidence 2 - Letter from Mechanical Engineer supporting Addendum 1 documentation. Hand delivered to tenant 6 Jan 2020. : Technical&EngineeringNotesAddendum2 (5 Addendum Delivered to Tenant 6 Jan 2020).pdf…

The Landlord uploaded this document January 06, 2020.

It is the Landlord who has the onus to prove they served their evidence in accordance with the Rules. The notations made by whoever uploaded the letter from the engineering company, as well as the date of the upload, support the Tenant's testimony about when she was served this document and contradicts both L.R. and E.H.'s testimony. I did not understand L.R. to witness the service, only to have information about service from other sources. I am not satisfied based on E.H.'s testimony that the letter from the engineering company was served January 04, 2020 given the comments noted above in relation to the document which support the Tenant's testimony. I find the letter was served January 06, 2020. The letter was not served "not less than seven days before the hearing". The Landlord failed to comply with the Rules.

In the Interim Decision I stated:

> All evidence submitted must be served on the other party in accordance with the *Act* **as soon as possible and at least in accordance with the Rules in relation to timing.** (emphasis added)

Given the above comment, and that the Landlord did not comply with the Rules, I exclude the letter from the engineering company and will not consider it.

The issues raised in the Application include the following:

- Light switch repair
- Bath tub plug repair

  The parties confirmed these issues have been resolved and I have not considered them.

- Bullying by staff of the Landlord

  I have not considered this issue for two reasons. First, it is not sufficiently related to the repairs issue and therefore is dismissed with leave to re-apply pursuant to rule 2.3 of the Rules. Second, the Tenant did not outline what remedy she is seeking for this issue. If the Tenant re-applies on this issue, she must set out what it is she is seeking. I note that this decision does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

- A request for $25.00 for the cost of obtaining the medical letter in evidence

  I advised the Tenant at the hearing that the cost of obtaining evidence is not recoverable. I have not considered this.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all evidence submitted. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to a repair order?

2. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

3. Is the Tenant entitled to compensation for monetary loss or other money owed?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started December 01, 2018 and is a month-to-month tenancy. Both parties agreed rent is currently $769.00 per month.

The Tenant sought the following:

- An order for repairs or that the Landlord comply in relation to the unit being too cold in winter
- An order for repairs or that the Landlord comply in relation to the unit being too hot in summer
- Compensation for a bathroom heater/cooler $785.06
- Compensation for an air conditioner $583.12

The Tenant testified as follows. The bathroom does not have enough heat. It is too cold in the winter. It is hard to get the bathroom warm enough even if she turns her heat all the way up and this causes the main room to be too warm. She purchased a heater for the bathroom. She wants the Landlord to install a baseboard heater in the bathroom.

The Tenant further testified as follows. The bathroom is too hot in the summer. It is so hot she gets sweat pouring down her due to the heat. She suffers from migraines which are triggered by the heat. She does not know what the Landlord can do about cooling the unit.

The Tenant submitted that it is the responsibility of the Landlord to provide heating and cooling and that safety of the unit is important. The Tenant referred to section 32(1)(a) of the *Act*. The Tenant said she could not find what the health, safety or housing

standards are. The Tenant referred to the emergency repair section of the *Act*. The Tenant referred to the BC *Safety Standards Act* but said she has not looked this up.

The Tenant testified that she called the Landlord numerous times about these issues, but the Landlord would not return her calls.

The Tenant provided written submissions in which she states the following. The unit is a studio. There is only one baseboard heater in the unit. She informed the Landlord in writing of the bathroom being too cold. The unit was over 90 degrees in summer. She suffered all summer long. She became dehydrated because of the heat. She could not sleep because of the heat. The heat affects her health and is not safe. She purchased the heater and cooler in May. She informed the Landlord of the heat issue on the deficiency sheet in August.

The Tenant submitted receipts for her purchases showing the air conditioner was purchased in July or August of 2019.

The Tenant provided further submissions and evidence prior to the adjourned hearing. In these, the Tenant submitted an excerpt from the 2018 BC Building Code stating that heating facilities must be capable of maintaining an indoor temperature of not less than 22 degrees in all living spaces. The Tenant submitted a letter from a doctor about the heating and cooling issues.

L.R. testified as follows. The evidence does not show a problem with the heat or cooling in the unit. The Landlord did a survey which did not support that there is excessive heat. Other tenants have not complained about the heat or cooling. The unit was built in accordance with the applicable building code.

J.B. testified that the Landlord had a deficiency review done and they did not find that heating or cooling was an issue in the building. She said the Landlord disputes that there is an issue with the heating or cooling in the building.

In relation to the compensation sought, J.B. testified that the issues raised were never brought to the Landlord's attention. She said the Landlord never had an opportunity to address the issues prior to the purchases by the Tenant. J.B. testified that the Landlord heard of the issues raised for the first time in the Application and that they were never raised with the Landlord verbally or in writing previously. She submitted that the

Landlord cannot be financially responsible for the personal choices of tenants regarding heating and cooling.

The Landlord submitted a voice message from the doctor who wrote the Tenant the letter in evidence. The doctor says she saw the Tenant twice at a walk-in clinic and completed the letter based on information the Tenant gave her.

In reply, the Tenant submitted that I should consider changes to building codes as requiring changes to buildings that only comply with previous versions of the building code. The Tenant also testified that she submitted a complaint about these issues as part of the deficiency review. However, the Tenant also stated that she never raised the heating or cooling issue with the Landlord in writing prior to the Application.

The Witness testified as follows. Her unit is severely hot in the summer. The hallway in the top of the building is also severely hot. Her bathroom is freezing in winter. She has never complained about these issues to the Landlord. Her unit is a one bedroom unit. She has been in the Tenant's unit once briefly in the fall.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Heating and cooling

The heating and cooling issues are not repair issues as the Tenant is not seeking repairs of something that is in existence in the unit. The Tenant is seeking upgrades to the unit to address the heating and cooling issues. In relation to the heating issue, the Tenant is asking that a baseboard heater be installed in the bathroom. Given these are not repair issues, section 33 of the *Act* does not apply.

For the Tenant to be successful in her requests that the Landlord install a baseboard heater in the bathroom and address the cooling issue, the Tenant must show that the Landlord has failed to comply with section 32 of the *Act* which states:

> **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.

The Landlord denies that there is a heating or cooling issue in the unit.

There is no issue that the unit is a studio and has one baseboard heater in the main room. I am not satisfied based on these facts alone that the unit does not comply with the health, safety or housing standards required by law or is unsuitable for occupation by the Tenant.

The Tenant submitted an excerpt from the 2018 building code. The Landlord submitted an email from a construction company stating that this section of the building code is not applicable and explaining why it is not applicable. The Agents for the Landlord testified that the building is built to code.

I am not satisfied based on the evidence provided that the excerpt from the 2018 building code applies. Nor am I satisfied that the unit or building does not comply with the applicable building code. The Tenant has not submitted sufficient compelling evidence on these points.

Further, I am not satisfied the Tenant has provided sufficient evidence about the temperature of the unit in winter and summer. The Tenant has provided verbal testimony and her own written submissions about the temperature; however, I do not find this sufficient when the Landlord is disputing there is an issue. The Tenant has not provided further compelling evidence such as photos or other evidence showing the temperature readings in the unit, witness statements confirming the temperature in the unit or reports or assessments done by someone qualified to assess the heating and cooling issues.

I acknowledge that the Tenant called the Witness to provide evidence. However, the Witness had only been in the unit once briefly in fall. The Witness did not testify about the temperature in the unit. I do not find the testimony of the Witness about the temperature in the hall or her own unit sufficient to show there is an issue in the Tenant's unit. I note that the Witness lives in a one bedroom unit whereas the Tenant lives in a studio. The two units are not comparable.

I acknowledge that the Tenant submitted a letter from a doctor. Based on the voice message submitted by the Landlord, I accept that the doctor wrote the letter based on two visits from the Tenant at a walk-in clinic and on information the Tenant provided. This is not sufficient to corroborate the Tenant's testimony. I am not satisfied the doctor has any independent knowledge of the temperature in the rental unit. Nor am I satisfied the doctor has provided a valid basis for her conclusions in the letter. I place no weight on the letter from the doctor as I find it is neither reliable or credible evidence of a heating or cooling issue in the unit.

The Tenant submitted that I should consider changes to the building code in relation to these issues. I decline to do so. I do not accept that the unit is not suitable for occupation based solely on the fact that it complies with previous versions of the building code and perhaps not changes to the building code. Further, if the Tenant's position is that the Landlord is required by law to upgrade the unit to comply with the most current building code, the Tenant is required to provide documentary evidence of this. The Tenant has not done so.

In the circumstances, I am not satisfied the Tenant has provided sufficient evidence that there is an issue with the heating or cooling in the unit such that I am satisfied it is unsuitable for occupation. Nor has the Tenant provided sufficient evidence that the unit does not comply with health, safety or housing standards that are required by law. I am not satisfied the Landlord has breached section 32 of the *Act*. I am not satisfied the Tenant is entitled to an order that the Landlord install a baseboard heater in the bathroom or address the cooling issue.

Compensation

The Tenant has sought compensation for the bathroom heater/cooler and air conditioner which she purchased because of the heating and cooling issues raised.

Section 7 of the *Act* states:

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I decline to award the Tenant the compensation sought for two reasons.

First, the Tenant has not shown that the Landlord breached the *Act* in relation to the heating or cooling issue. Therefore, the Tenant is not entitled to compensation based on these issues.

Second, I am not satisfied based on the evidence provided that the Tenant notified the Landlord of the heating and cooling issues in writing prior to purchasing the heating and cooling systems. I do not find verbal notification sufficient. The Agents for the Landlord denied that the Tenant notified them verbally of these issues. There is insufficient evidence before me that the Tenant did. Further, tenants should put their concerns in writing to a landlord prior to taking their own steps to address issues if they wish the landlord to compensate them for such steps.

Given the above, the Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

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: January 20, 2020

Residential Tenancy Branch