Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX CREST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, RR

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on September 15, 2019, in which the Tenant requested a rent reduction pursuant to section 65(1) of the *Residential Tenancy Act* and to recover the filing fee.

The hearing of the Tenant's Application was scheduled for teleconference at 11:00 a.m. on November 25 ,2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

By Interim Decision dated November 25, 2019, the first hearing date was adjourned as the Landlord's evidence was not served on the Tenant. This hearing must be read in conjunction with my November 25, 2019 Interim Decision. I also ordered that the Landlord measure the square footage of the rental unit and provide that information to the Tenant and the Residential Tenancy Branch. I confirm those measurements were provided by the Landlord and considered in making this my Decision.

When the hearing reconvened on January 17, 2020, the parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant confirmed that in October 2019 the Landlord refunded the $250.00 “move in fee”, such that the Tenant formally withdrew his claim for this amount.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to a rent reduction?

2. Should the Tenant recover the filing fee?

Background and Evidence

The nature of the Tenant’s claim relates to the fact that he claims he does not have air conditioning in his unit, the rental unit is smaller than advertised and he does not have a storage locker.

The Tenant testified that the tenancy began June 13, 2019. Monthly rent is $2,400.00.

The ad for the rental unit was provided in evidence by the Landlord and confirms the rental unit was advertised as being 653 square feet in size; additionally, the rental unit was advertised as being “air-conditioned”; the ad made no mention of storage.

At the first day of the hearing the Landlord stated they were relying on measurements provided by BC Assessment. As noted earlier in this my Decision, during the hearing on November 17, 2019 I ordered the Landlord to measure the rental unit. On December 2, 2019 the Landlord provided the following measurements:

Main Level	
Foyer	6’ x 5’2”
Dining room	10’1” x 5’5”
Living room	11’8” x 9’8”
Solarium	7’10” x 6’5”
Storage	6’6” x 5’10”
Laundry closet	4’8” x 2’4”
Bathroom	7’2” x 4’10”
Bedroom	10’7” x 8’8”
Walk-in closet	9’2’ x 4’
Total main area	**640 sq. ft.**
Other areas	
Deck	8’8” x 7’9”
Total other arears	**67 sq. ft**

In terms of these measurements, the Tenant stated that based on his calculations, the total of all the rooms is 524 square feet, not 640. He also stated that they missed capturing a small area between the bedroom and the dining room which was is 21 square feet such that the total is 545 square feet, not 640 as noted on the Landlord’s measurements.

The Landlord also provided a copy of the floor plan for the rental unit. The Tenant noted that based on the floor plan, the entire area of the rental unit, if it were a perfect square is 708 square feet; however, if you subtract the deck it is 640. The Tenant noted that the rental unit is not a perfect square, as some of the area on the bottom left of the floor plan is actually his neighbours, so it should not be used in any calculation. The Tenant stated that if you add in all the walls and the side walls the square footage is 567 maximum.

In terms of the storage locker, the Tenant testified that V.C. told him the storage locker number and parking stall associated with his evidence. On June 15, 2019 V.C. wrote the storage locker number and parking stall on the back of his tenancy agreement. A copy of this note was provided in evidence by the Tenant.

The Tenant also provided in evidence electronic communication. On June 22, 2019, the Tenant informed V.C. that the parking did not go that low and his fob did not work on any of the storage lockers. In response, V.C. informed him of his correct parking number; she then informed him that there was no storage for the unit.

In terms of the $3,600.00 claimed the Tenant confirmed that this figure represented a 12.5% reduction in rent. As he has lived in the rental unit for 8 months, with four months left of his fixed term, he seeks $300.00/month reduction for the full 12 months which would include a lump sum of $2,400.00 in compensation in addition to $300.00 per month for the balance of his tenancy.

When the tenancy first began the Tenant observed that the air conditioning was not working adequately. He brought this to the Landlord's attention by email (copies of which were provided in evidence). In response to his concerns the Landlord's agent wrote as follows:

> "We spoke to the buildings and they clarified that the unit in the suite is not an a/c unit but a "cooling" unit. So it may not be as cold as traditional a/c…"

The Tenant then expressed his frustration and confirmed that he was specifically looking for a unit with air conditioning. In response the Landlord's agent wrote as follows:

> "I can understand your frustration regarding the advertising versus the actual. We will work with our team to ensure accuracy going forward."

On July 12, 2019, the Landlord communicated that the owner was willing to provide a portable air-conditioning unit.

On August 7, 2019 the Landlord's agent sent an email to the Tenant and provided the following options:

1. A portable air-conditioner, to be purchased by the Landlord at a cost of $800.00 maximum.
2. A one-time compensation equivalent to ½ months rent.
3. Ending the tenancy due to frustration of the lease.
4. Dispute with the Residential Tenancy Branch.

At the continuation of this hearing the Tenant stated that, in addition to the issues with the lack of air conditioning, the rental unit also does not have heating. He stated he informed the Landlord about this on December 2, 2019 (the same day he received the Landlord's measurements). The Tenant further stated that he likes his rental unit cool and did not know the heating did not work at that time. He confirmed that at the time of

the hearing the unit was 16 degrees Celsius and he was wearing a coat inside his rental unit.

In response to the Tenant's claim the Landlord's property manager, A.L., testified as follows.

In terms of the air conditioning and heating issues, A.L., testified that the system is a heating and cooling system which is adjusted according to the temperature and the entire building is adjusted to a set temperature. A.L. also stated that the Tenant was the first person to move into the building. She stated that the first time the Tenant complained about the temperature they sent someone to check the system. A.L. stated that they had someone check on it and it was working, but not to the Tenant's satisfaction. She stated that they attended on three separate occasions: July 2, 2019, July 3, 2019 and October 21, 2019.

In general response to the Tenant's concerns about the temperature of the rental unit, A.L. stated that they believe there is nothing wrong with the heating and cooling system, that they responded to the Tenant's concerns in a timely manner, and they even tried to accommodate his specific requests. A.L. also noted that they offered a portable air-conditioning unit to the Tenant on August 7, 2019 which the Tenant declined.

A.L. stated that she was not aware, until the second day of the hearing, that the heating was not working to the Tenant's satisfaction. Although she received the email from the Tenant she did not realize until the hearing that he had raised the issue of the heating in that email as it appeared to be in response to the measurements provided.

In terms of the Tenant's claim regarding the size of the unit, A.L. stated that the developer told her that it was 653 square feet. They then had an independent person measure the unit and they determined that it was 640 square feet.

A.L. also sought clarification as to how rental units are measured, and provided in evidence a copy of an email she received confirming this; the email included the following text:

> "…Often, differences in square footage come down to our following of the ANSI standard…
>
> The standard states that adjoining walls must be calculated to the centre point. So each unit shares half of the wall thickness. This is estimated by measuring into the common

> area, such as the hallway and dividing it in half. Since it is not possible to know for sure what the wall thickness to adjoining units is, these standards are in place so that multiple technicians can measure the same unit and come up with the same number. This does of course mean that the square footage may not be 100% accurate for attached units, but as long as everyone is using the same numbers it is the best possible solution.
>
> Often the strata numbers are based on building plans. Which may or may not be accurate, since walls can be moved here and there during the building process. However they tend to have a greater understanding of the wall thicknesses since they are based on the original architectural drawings.
>
> All of our drawings include all interior space calculated to the outside finished edge of exterior walls or, as mentioned, the estimated half way point of adjoining walls. These measurements are taken with laser measuring tools and drawn on site t reduce the chance of errors from mis-measurements…"

In terms of the storage locker, A.L. testified that when they advertised the unit, they did not advertise storage. She also noted that storage is specifically not included in the rent on the tenancy agreement. A.L. further stated that the Landlord's representative, V.C., was incorrect and misread the information when informing the Tenant as this unit does not come with a storage locker.

A.L. also testified that there are 164 units in total in the building and she manages three units in the building, none of which have storage lockers. She also stated that she did not know how big the storage lockers are.

In reply to the Landlord's submissions the Tenant stated that he has no idea how big the storage locker is or how much it would cost to rent one in the rental unit. He also stated that the Landlord only came once, on July 3, 2019, to look at box that controls the air-conditioning.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on

the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After consideration of the testimony and evidence of the parties and on balance of probabilities I find as follows.

I will first address the Tenant's concerns regarding the size of the rental unit. I find, based on the documentary evidence before me, that the Landlord's advertised the rental unit as 653 square feet. The Tenant viewed the rental unit and entered into the tenancy agreement.

Pursuant to my Interim Decision the Landlord had the rental unit professionally measured. The Landlord also provided written clarification as to how square footage is measured in residential buildings. The Tenant disputes the Landlord's measurements

and submits that the rental unit is 567 square feet, which if true, would mean the rental unit is 86 square feet less than advertised.

In any event, the size of the rental unit is not a latent defect as it was discoverable at the time the Tenant viewed the unit and agreed to the tenancy. Had the size of the unit been of particular import to the Tenant, he was at liberty to measure the unit at the time of viewing; there was no suggestion that he measured the unit at that time. Additionally, the tenancy agreement made no mention of the size of the rental unit.

In all the circumstances, I am unable, based on the evidence before me, to find the Landlord breached the *Residential Tenancy Act,* the *Regulation* or the tenancy agreement in terms of the square footage of the rental unit. I therefore dismiss the Tenant's claim for related compensation.

The advertisement clearly indicated the rental unit had air conditioning. While I accept the Landlord's testimony that the unit has central heating and cooling, this is arguably not air conditioning in the traditional sense. The Tenant stated that he likes his rental unit cooler and this was a deciding factor in taking this rental unit. The Landlord admitted their error in communication to the Tenant and assured him they would be more accurate in the future.

Again, had air conditioning been of particular import to the Tenant (as he stated during his testimony before me) he was at liberty, during the viewing of the rental unit, to enquire with the Landlord's representatives as to the functionality of the air-conditioning or cooling/heating unit as the case may be. There is no suggestion such discussions occurred at the time. Further, there was no suggestion that air-conditioning was present during the viewing, and then removed when the tenancy began.

In any event, it is notable that the tenancy agreement also makes no mention of air conditioning.

The *Parol Evidence Rule* provides that if the language of the written contract is clear and unambiguous, then no extrinsic parol evidence may be admitted to alter, vary, or interpret in any way the words used in the writing. In this case, the written contract is the tenancy agreement and the parol evidence is the advertisement. I find the written contract was clear in terms of what was included in the rent and what was not included. The advertisement is not required to interpret any ambiguity with respect to air-conditioning and the advertisement does not alter the terms of the tenancy agreement.

As such, I find the Tenant has failed to prove the Landlord breached the *Residential Tenancy Act,* the *Regulation* or the tenancy agreement in terms of air conditioning.

I also note that the Tenant failed to provide any evidence to support a finding as to the loss suffered from not having air conditioning. Such evidence could have been in the form of comparable units with and without such a feature.

Additionally, the evidence confirms the Landlord offered to purchase a portable air conditioning unit for the Tenant. The Tenant declined this offer. While central air conditioning may be preferable to the Tenant, I find the Tenant's refusal to accept the portable air conditioning unit to be unreasonable. As noted previously, the Tenant, as the claiming party, must also prove that he followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed; by refusing the portable air conditioner I find the Tenant has failed to mitigate his losses.

For these reasons I find the Tenant's is not entitled to monetary compensation related to air-conditioning in the rental unit.

I accept the Tenant's testimony that he was told by the Landlord's agent that he would have a storage locker. The documentary evidence submitted by the Tenant confirms the Landlord's agent erroneously informed him of the storage locker number.

However, storage was clearly not provided for in the tenancy agreement. The discussions with the Landlord's agent are *parol evidence* and do not change the terms of the contract between the Tenant and the Landlord. As such, I am unable to find the Landlord breached the *Residential Tenancy Act,* the *Regulations,* or the tenancy agreement by not providing a storage locker to the Tenant.

Notably, storage for this unit was also not advertised by the Landlord. The Tenant had not viewed the storage lockers, did not know what size they were, or what it would cost to rent one. Again, had it been important to the Tenant to have a storage locker, presumably he would have insisted on viewing the locker at the time he viewed the rental unit.

Even if I had found the Landlord breached their obligations by not providing a storage locker to the Tenant, I would have found the Tenant submitted insufficient evidence to

support a finding as to the actual amount required to compensate the Tenant for the claimed loss.

For these reasons I dismiss the Tenant's claim for compensation for lack of a storage locker.

The Tenant stated that his heating is also inadequate; this was apparently not discovered by the Tenant until late November or early December 2019. This was not addressed in the Application filed on September 15, 2019.

I accept the Landlord's representatives' evidence that she was not immediately aware the Tenant's request regarding the heating as it was imbedded in an email sent to numerous representatives of the Landlord and in response to the Landlord's measurements of the rental unit. I further accept her assurance during the hearing that someone would be coming to look at the heating. Should the heating issues persist, the Tenant is at liberty to file a further Application.

Conclusion

The Tenant's Application for a rent reduction is dismissed. Having been unsuccessful in his Application, his claim for recovery of the filing fee is similarly dismissed.

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: February 7, 2020

Residential Tenancy Branch