Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, DRI, OLC, 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 section 32;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 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 were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by an advocate ("**TK**").

TK testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail. The landlord confirmed receipt of the notice of dispute resolution package via registered mail.

The landlord did not serve any evidence in support of his response to the applicant on the tenant. He testified that he did upload some evidence to the Residential Tenancy Branch (the "**RTB**") website the morning of the hearing (February 21, 2020), but admitted that this was not served on the tenant. The Rules of Procedure require that evidence be served on the opposing party in advance of the hearing. I find that the landlord failed to do this. Accordingly, exclude from evidence all documents upload to the RTB website on the morning of the hearing by the landlord.

Issues to be Decided

Is the tenant entitled to:

- an order to the landlord to make repairs to the rental unit;
- a determination regarding their dispute of an additional rent increase by the landlord;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

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.

The relationship between the parties reaches back farther than the present tenancy agreement. Initially, the tenant resided in rental unit 412 of the residential property ("**Unit 412**"). Monthly rent was $650, and the tenant paid the landlord a security deposit of $325.

In August 2019, the parties entered into an oral tenancy agreement whereby the tenant would move into a different unit in the residential property ("**Unit 306**"). At the hearing, the parties did not agree on the terms of this agreement other than it was to start on September 1, 2019. The landlord testified that:

1) monthly rent was $650;
2) the tenant was to receive the first month's rent free in exchange renovating the rental unit, which included:
    a. installing laminate floors;
    b. repairing appliances; and
    c. repairing the faucets in the bathroom sink and tub; and
3) Pay a security deposit of $375 to the landlord.

The landlord testified that he returned the security deposit for Unit 412 to the tenant prior to September 1, 2019.

The tenant denies that the terms of the tenancy for Unit 306 were as alleged by the landlord. He testified that, in September 2019, the terms of the tenancy were that:

1) monthly rent was $375;
2) he would install the flooring in the rental unit in exchange for October 2019 rent;
3) no security deposit would be required;
4) the landlord would repair appliances and faucets; and
5) the landlord would install a lock on the front door.

However, the tenant testified that, in October 2019, he changed his mind, and asked for the landlord to do the repairs instead. He testified that the landlord agreed to this. This is contrary to what the tenant wrote in his written submissions, where he wrote:

> The landlord stated in a conversation prior to move-in that the unit would be suitable for living in. [The landlord] did not ensure the unit was ready for move-in as agreed to in the agreement and in conversation as testified by [the tenant].

I note that these submissions were written prior to hearing but written in a voice that anticipated the tenant's testimony.

The tenant agreed that the security deposit for Unit 412 was returned to him.

In support of his assertion that monthly rent was $375, the tenant submitted an invoice dated September 5, 2019 from an agent of the landlord for $375, which contains the annotation "Rent for Sept/2019". The landlord testified that this was a receipt for receipt of the security deposit.

In any event, the tenant testified that he never moved into Unit 306, due to its condition. In his written submissions, the tenant wrote that the rental unit did not have running hot water, a working refrigerator, or a deadbolt on the entrance door. He also submitted photographs which were taken at the start of the tenancy which show that flooring had not been installed in Unit 306, and that the flooring supplies were stored in the rental unit.

The landlord denied that he ever agreed to make the repairs himself. He denied that he released the tenant from his obligation to repair the rental unit in exchange for one month's free rent. Additionally, the landlord testified that he received $650 from the ministry of housing as payment for October 2019 rent. He testified that he gave $450 of this amount to the tenant in an effort to motivate him to complete the agreed upon repairs. The tenant denied this.

The landlord testified that, in early November, as the tenant had not done the agreed to work, he attended Unit 306, installed the flooring himself and repaired the faucets. He installed a new refrigerator. He denied that front door needed a new lock or deadbolt.

The tenant testified that he had vacated the Unit 306 by November 1, 2019. He testified that he was staying with his sister in another unit located in the residential property. He says he told the landlord's property manager (who is no longer employed by the landlord, and from whom I have no evidence) the he was leaving the Unit 306.

The tenant testified that he is seeking a monetary order for all of the rent paid in connection with Unit 306's rental, amounting to $1,025, representing $375 for September 2019 and $650 for October 2019.

The landlord denied receiving any rent for September 2019 (which was to be free for the tenant, per the landlord's version of the tenancy agreement). As stated above, he testified that he received rent for October 2019, but that he returned $450 to the tenant.

Additionally, the landlord denied that the tenant had terminated the tenancy, and that the tenant failed to pay any rent since October 2019. As the landlord has not yet brought an application to recover rental arrears, I will not address this issue further.

Analysis

As the tenant has taken the position that the tenancy has ended, it is not necessary for me to consider ordering that:

- that the landlord to make repairs to the rental unit;
- that the landlord to comply with the Act, regulation or tenancy agreement; or
- an invalid rent increase occurred.

Such orders would be moot.

What remains is the tenant's application for a retroactive rent reduction. Although not articulated as such in the written application, the tenant seeks a full reimbursement of all rent paid to the landlord (put another way, a 100% retroactive rent reduction) on the basis that the rental unit was not in a livable condition at the start of the tenancy.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:

- 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.

(the "**Four-Part Test**")

Section 32 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
>
> 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.

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> 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.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the tenant must prove on a balance of probabilities that the landlord breached section 32 of the Act.

Based on the testimony of the parties, I find that the landlord did not breach section 32 of the Act. The parties' testimony as to the terms of the tenancy agreement are conflict. Additionally, as noted above, the tenant's oral testimony conflicts with his written submissions.

Upon considering both parties' testimony, I find the landlord to be more credible. His testimony was internally consistent and focused, and it did not contradict itself.

Additionally, if I were to prefer the tenant's testimony, I would necessarily have to find that the landlord, inexplicably, decided to reduce the month rent from $650 (for Unit 412) to $375 (for Unit 306). There is no evidence before me which would explain why the landlord would agree to do this.

As such, I find that the terms of the tenancy are as alleged by the landlord. Accordingly, I find that the responsibility to make the repairs sought by the tenant, and therefore bringing Unit 306 up to a suitable living standard, were the responsibility of the tenant to make, not the landlord. I find that the tenant failed to make these repairs. Accordingly, I find that the landlord did not breach the tenancy agreement, or, if he did, that the tenant failed to act reasonably to minimize his loss as a result for this breach by not completing the repairs he agreed to complete.

As such, the tenant has failed to satisfy the conditions of the Four-Part test and is not entitled to recover any amount from the landlord, or, put another way, any retroactive reduction in rent.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 27, 2020

Residential Tenancy Branch