Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, RR, FFT**

Introduction

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

- an order requiring the landlord to comply with section 13(2) of the Act, and provide them with the landlord's address for service pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed she received the tenant's notice of dispute resolution proceeding package. The parties confirmed that each had received the other's documentary evidence, with one exception. The landlord stated that she had not received a copy of a photograph of a laundry receipt. The tenants stated that they thought they included the photo in their evidence package, however, they could not provide any corroboration of this. As such, I exclude that photograph from the documentary record. The tenants were permitted to give testimony as to the contents of the receipt.

Preliminary Issue – Forwarding Address

The landlord agreed to amend the tenancy agreement to replace the landlord's existing address for service (which was the same address as the rental unit) with the address listed on the cover of this decision. The landlord also agreed to repay the tenants the

cost of the Land Title and Survey Authority title search ($12.42) they conducted to locate the landlord's mailing address.

Issues to be Decided

Are the tenants entitled to:

1) a rent reduction; and
2) recover their filing fee?

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 parties entered into a written tenancy agreement starting December 1, 2019. The parties agree that the tenants moved in on November 26, 2019. Monthly rent is $1,700 and is payable on the first of each month. The tenants paid the landlord a security deposit of $850 which the landlord still retains.

Tenant DO testified that shortly after taking possession of the rental unit, the tenants discovered that the gasket between the door and the body of the rental unit's washing machine contained mould (the "**Gasket**"). He testified that the tenants unsuccessfully attempted to clean the Gasket with bleach and water. It is common ground between the parties that, as the Gasket contained mould, the washing machine was not usable.

DO testified that he informed the landlord of the mould, and of the cleaning efforts. He testified that the landlord attended the rental unit on December 3, 2019 to take a look at the issue. The tenants asked that the Gasket be replaced. The landlord arranged for a contractor to attend the rental unit to address the problem. The contractor attended the rental unit on December 10, 2019 but told the tenants that he was only there to inspect the Gasket on this visit, and that the issue would be fixed on a future visit.

DO testified that the tenants did not hear for the contractor or the landlord for over a week after this initial inspection. DO emailed the landlord on December 20, 2019 asking for an update. The landlord then contacted the contractor, who returned to the rental unit on December 30, 2019. The repair person attempted, unsuccessfully, to clean the Gasket on this visit.

At this point, DO testified, the tenants were frustrated. He testified that at the outset of the communication, the tenants told the landlord that they had tried to clean the Gasket unsuccessfully, and that, after a month, no progress had been made in fixing the problem. DO testified that for this entire time, the tenants were unable to do laundry in the rental unit. He testified that the tenants spent $32 to do laundry off-site, and $10 in gas to drive to and from the laundromat.

DO testified that, on January 7, 2020, the landlord and a new contractor attended the rental unit to look at the Gasket. He testified that, on January 17, 2020, this new contractor returned to the rental unit with a replacement gasket, which he installed. DO testified that, since the installation, there have been no issues with the new gasket or mold in the washing machine.

The landlord agreed with the timeline of events set out above. She testified that the amount of time that it took to resolve the issue was reasonable, as she was doing her due diligence to determine what steps should be taken to address the issue. She testified that she was unsure if the entire washing machine needed to be replaced, if only the Gasket needed to be replaced, or if the mould could be removed by cleaning.

The tenants argue that by failing to clean or replace the Gasket, the landlord breached section 27(1) of the Act, which states:

> 27(1) A landlord must not terminate or restrict a service or facility if
> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
> (b) providing the service or facility is a material term of the tenancy agreement.

The tenants seek a 10% retroactive rent reduction for the time they were without a functioning washing machine (December 1, 2019 to January 16, 2020) (in total, $257.68). They also seek compensation for the cost to do laundry at a laundromat, and the cost of gas to travel there ($42).

The landlord opposes such relief. She argued that she acted reasonably to address the issue raised by the tenants, and she was entitled to consider her options before deciding what method of remediation to undertake.

Analysis

Policy Guideline 22 states:

> **An "essential" service or facility** is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation or use of the manufactured home site as a site for a manufactured home, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation.
>
> [emphasis added]

Based on this definition, a washing machine is not an "essential" service or facility. The tenants were able to reside in the rental unit for six weeks without the ability to use it. The lack of a washing machine did not make using the rental unit as a living accommodation impossible, or even impractical. Rather, it made it inconvenient.

However, this does not mean that the tenants are without recourse. Section 32 of the Act 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.

I find that the tenants had a reasonable expectation to have a working washing machine in the rental unit, given that one was located in it for their exclusive use. As such, I find that, without a functioning washing machine, the rental unit was not in a state of repair suitable for occupation by the tenants.

A breach of section 32 by a landlord does not automatically give rise to a reduction of rent. A landlord has a reasonable amount of time to make repairs after the problem is reported to them by a tenant. If the landlord fails to make the repairs in a reasonable time, then a rent reduction is appropriate.

After having considered the evidence and the testimony of both parties, I find that the landlord did not complete the repairs within a reasonable period of time.

I accept the landlord's argument that she was entitled to investigate the problem to determine the best course of action to address the problem. However, six weeks is not a reasonable period of time to take for such an investigation.

I note that between December 3, 2019 and December 30, 2019, the landlord was only made efforts to clean the Gasket, despite being advised by the tenants that they had tried this already. It should not have taken the landlord 27 days to corroborate this. The landlord should have been able to determine whether cleaning would remove the mould on December 10, 2019, when the contractor first attended the rental unit.

Accordingly, I find that the delay between December 10 and December 30, 2019 was unreasonable. The tenants are entitled to a rent reduction for this time. I find that all other time spent by the landlord to address the problem was reasonably spent, and no other rent reduction is warranted. I accept the tenants' submission that 10% is an appropriate reduction. Accordingly, the tenants are entitled to a rent reduction in the amount of $109.68 ($1,700 ÷ 31 days = $54.84/day, $54.84 x 10% reduction = $5.48, $5.48 x 20 days = $109.68).

I accept DO's uncontroverted testimony that the tenants incurred $42 in expenses associated with doing laundry when they could not use the washing machine. Section 7 of the Act obligates the landlord to compensate the tenants for any loss they suffered as a result of the landlord's breach of section 32 of the Act. Accordingly, I order the landlord to pay the tenants $42.

As the tenants have been partially successful in their application, I order that the landlord reimburse them their filing fee ($100).

Conclusion

Pursuant to sections 65, 67, and 72 of the Act, I order the landlord to pay the tenants $264.10, representing the following:

LTSA Fee	$12.42
Rent Reduction	$109.68
Laundry Costs	$42.00
Filing Fee	$100.00
Total	**$264.10**

Pursuant to section 72(2) of the Act, the tenants may deduct this amount from a future rent payment. In the event that they do not, I enclose a monetary order in the amount of $264.10 which is enforceable in the Provincial Court of British Columbia.

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: March 31, 2020

Residential Tenancy Branch