Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Chelsea Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC

Introduction

The tenant filed an application for Dispute Resolution (the "Application") on February 27, 2020 seeking a monetary order for loss or compensation. Additionally, they seek an order that the landlord comply with the legislation and tenancy agreement.

The matter proceeded by way of a hearing on April 27, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenant and the landlord both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the landlord confirmed they received the notice of this hearing and the tenant's evidence via registered mail. The landlord's evidence contains a 'proof of service' document dated April 20, 2020 verifying that their evidence package was left with the tenant at the unit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for loss or compensation pursuant to section 67 of the *Act*?

Is the tenant entitled to an order that the landlord comply with the *Act*, the regulations and/or the tenancy agreement?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant presented that she resided for 10 years in a rental unit ("unit A") managed by the landlord. There is no tenancy agreement in the evidence of this prior living arrangement – a reference in a later Tenant Transfer Agreement provides that the tenancy agreement was dated April 1, 2009. Both the tenant and the landlord spoke to the long-term living arrangement since 2009 that was in place, with subsidies from BC Housing.

On March 9, 2019, flooding occurred on the property and this necessitated the landlord moving residents in the residential property to different accommodation. In the short term, this was in a hotel paid for by the landlord. The landlord paid for the costs of meals and moving expenses.

The landlord realized the difficulty on the property would exceed the original estimated time to repair. The initial timeframe of 16 weeks increased for various reasons. By the landlord's submission, the entire remediation took nearly 11-months at a significant cost.

Beyond the short-term arrangement with the tenant in a hotel, the landlord then sought suitable alternative housing for them as well as other property residents. This included another rental unit on a separate site ("unit B") owned and operated by the landlord and involved BC Housing due to the subsidy applicable to this tenancy.

The landlord secured accommodation for the tenant, and the tenant accepted unit B offered by the landlord on March 13, 2019. The tenant made complaints about the cleanliness of the unit. In the landlord's evidence, on March 23 the tenant was moved to a short-term stay at a hotel so the landlord could allow a third-party contractor full access to the unit to examine air quality and overall condition of the unit.

By May 2019 the tenant requested relocation back to the original unit A property as soon as possible. The landlord advised of another unit at that same original property ("unit C") available in August. On August 28, 2019, the tenant and landlord representative signed a 'Tenant Transfer Agreement' that stipulates the move out from

unit B occurred on August 21. On August 28 the tenant and landlord signed a 'Letter of Understanding and Agreement' that is in the evidence.

With the move into unit C, both parties signed a tenancy agreement on August 28, 2019. This shows a tenancy start date was September 1, 2019, with this being the transfer from unit A. The tenant initialled the acknowledgement of the BC Housing Subsidized Unit. The agreement documentation also shows a pre-authorized debit arrangement, and the transfer of the security deposit amount from the previous rental unit A.

In this property, the tenant raised their concerns about insects. This prompted the landlord to hire pest control in October 2019. Throughout this period, the tenant requested updates to the remediation project, and appealed to the landlord for a transfer to the original unit A.

In their Application, the tenant requests $20,000.00 as compensation. The tenant provides the following on the Application: "My mental health and physical health is effected by my housing situation that stared [*sic*] since March 2019. It could be resolved easily if the landlord respected us as their tenants." In a statement dated February 28, 2020, the tenant states: "I am a person with a disability resulting from significant stress, anxiety and depression that I have dealt with for years."

The tenant provided a doctor's note dated February 3, 2020 that states: "[they are] very distraught and stressed because of [their] housing situation." In another statement the tenant states that they "felt very sick" after a January phone call to the landlord's office. They state this was a "hypertensive crisis."

In the hearing, the tenant provided that $20,000.00 is compensation because of how much they and their family have gone through. This has caused stress and anxiety for the tenant.

The tenant also provided that they indicated the amount of $20,000.00 "just because of the suffering of the situation". They indicated the amount chosen is not based on a calculation; rather, it is a number arrived at for the purposes of completing the Application to show they feel they are entitled to some amount of monetary compensation. The tenant clarified they did not lose income; rather, their health was at issue and "really got damaged" throughout the remediation process.

In the hearing the landlords presented their timeline of events that they submitted in documentary form. In the hearing they presented that there is no worksheet presented to them that details the claim. The landlord's documentary evidence contains a timeline which they stated focuses on relevant matters to the tenant's claim. This is supplemented by copies of complaints, emails, text messages and third-party accounts. They stated in their submission: "Ultimately the remediation took nearly 11-months and at a cost of over $600,000." They reiterated that the entire project has been challenging when considering regulatory and city approval.

Analysis

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

From the submissions of the landlord, I am satisfied that an agreement was in place between the landlord and tenant for the rental unit C. This agreement was signed on August 28, 2019, containing all the terms and agreements. Throughout, the tenant provided their signature or their initials where required. By signing this new agreement, the landlord is obligated to provide the tenant with their obligations as set out in this document. This is applicable to the current rental unit – the tenant has no entitlement back to the previous unit any time in future should it become available. There is no clause in the current agreement that provides for relocation of the tenant back to the tenant's previous rental unit should it become available.

Under section 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to section 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**

4. Steps taken, if any, to mitigate the damage or loss.

When evaluating the tenant's submission and evidence, I find the amount of $20,000.00 is not quantified. That is to say, the amount of $20,000.00 is an arbitrary amount, and does not reflect tangible measurable damage. The tenant does not establish the value of the damage or loss – they did not present impact to finances or personal expenses. Moreover, the tenant provided that they made a claim in the amount of $20,000.00 "just because of the suffering of the situation" – this is not a calculated, or even estimated, amount. There is no reference to comparable claims for injury or infliction of mental distress; therefore, there is no base amount from which to gauge an amount of compensation. As such, the tenant has not established the value of the damage or loss.

Section 32 and 33 of the *Act* set out the landlord's obligations to repair and maintain standards, and emergency repairs. From the original unit, the landlord's actions -- while they began the work required under sections 32 and 33 – were to ensure the tenant had accommodation. Subsequently, they provided accommodation to the tenant in hotels, and moved them into alternate temporary and permanent accommodation. I find this was all completed within a reasonable amount of time.

I find there was no violation of the *Act*, regulations or tenancy agreement such as it exists. The landlords presented how they responded to the tenant's complaints. I find no breach occurred on the part of the landlords. Further, there is no proof of high-handed conduct on the part of the landlords; the tenant instead attributes the circumstances to a lack of respect for their tenants which I find is perceived, rather than demonstrated by specific actions.

Also, I find the tenant did not present that they undertook or concentrated on actions that show they attempted to lessen the impact of the situation. The unforeseen circumstances presented challenges; however, I find nothing in the evidence that shows the tenant made reasonable efforts at cooperating with the landlords who undertook actions to accommodate. I find the tenant started communication on their own terms, to an extreme degree. I find the more recent transfer request did not comply with the measures put in place by BC Housing to indicate how a move will improve or alleviate their medical condition. Finally, the tenant did not present how they relied on personal contacts or established support contacts for consultation in order to assist with their situation. In summary, I find the tenant did not take steps to mitigate damage or loss which is not proven.

For the reasons outlined above, I find the tenant has not presented a preponderance of evidence to show on a balance of probabilities that they are entitled to compensation for damages or loss that is the responsibility of the landlords.

On the tenant's request for an order that the landlord comply with the *Act*, regulations or tenancy agreement, I refer to the current tenancy agreement. Based on my finding above, the landlord's obligations are to provide the tenant with the current rental unit specified in the tenancy agreement. The landlord is not obligated to provide the tenant with a transfer back to the original unit or any other unit under their management. The tenant has thus failed to show that the landlord is not fulfilling obligations under the *Act*, the regulations or the tenancy agreement by not allowing them to transfer to another unit.

Conclusion

For the reasons above, I dismiss the tenant's Application in its entirety and 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 *Act*.

Dated: May 21, 2020

Residential Tenancy Branch