Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDCT, RP, DRI

Introduction

In this dispute, the tenant sought various relief under the *Residential Tenancy Act* (the "Act"), including a claim for compensation under section 67 of the Act.

The tenant applied for dispute resolution on March 20, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 19, 2020. The tenant attended the hearing, was given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the landlord did not attend. The tenant testified that he served the landlord's property manager with the Notice of Dispute Resolution Proceeding package in-person on March 30, 2020. Based on this undisputed testimony I find that the landlord was served in accordance with the Act.

I note that the property manager was named as the landlord in the tenant's application, but I confirmed with the tenant that the legal name of the landlord is Hospitality Inn. As such, I have amended the landlord's name to reflect this.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties' testimony may necessarily be reproduced.

Preliminary Issue: Tenant Has Moved Out of Rental Unit

The tenant confirmed (based on an amendment that was received) that he no longer resides in the rental unit. As such, the tenant's application for the three matters unrelated to compensation are now moot. Only compensation will be addressed in this decision.

Issue

Is the tenant entitled to compensation?

Background and Evidence

The tenant testified that the tenancy started in November 2019 and ended when he vacated the rental unit in April 2020. Monthly rent was $850.00, and he paid a security deposit of $100.00 and a pet damage deposit of $100.00.

He seeks compensation in the amount of $2,550.00 (calculated as three months' rent) for three matters: (1) no laundry facilities, (2) black mold issues, and (3) a broken door left unrepaired.

Regarding the laundry facilities, the tenant testified that a cold snap had broken one of the pipes in the laundry room, which was then closed since. Laundry facilities are, he testified, part of the rent and tenancy agreement.

Regarding the black mold issues, there was extensive mold issues throughout the rental unit, and moisture that got into the rental unit merely exacerbated the problem. Various photographs of the mold were submitted into evidence. There was mold on drywall that had simply been painted out, instead of being properly patched and repaired. He also testified that he has bronchial issues (though he admitted that he is a smoker), and that the black mold put him at increased risk, not to mention the risk from COVID-19.

Submitted into evidence was e-mail correspondence dated March 20, 2020, in which an environmental health officer of the regional health authority told the property manager about the tenant's concerns regarding the mold, and what steps would or should be taken.

The moisture issues also lead to the door frame (for the entrance door) being bent so far out of shape that the tenant, who self-described as a big person and 6'4" high, could not open or close the door. Indeed, the issue became so bad that on or about December 22, 2019, the tenant had to call the fire department who came and kicked the door in, in order to let the tenant out.

The tenant testified that he explained the door and the mold issues several times to the property manager, who promised to send out a repairperson. No repair person ever attended. And no work was done to remedy the mold. Eventually the tenant moved out.

Analysis

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, the tenant seeks compensation for the lack of laundry facilities, the presence of black mold, and the inoperable door.

Section 27 of the Act states the following:

> 27 (1) A landlord must not terminate or restrict a service or facility if
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> (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.

Here, the tenant testified that laundry facilities were part of the rent. Thus, they were what I could conclude is a material term of the tenancy agreement. The landlord terminated or restricted the laundry facility, and, while no fault of its own by virtue of a broken pipe, apparently made no efforts to restore the laundry facilities. As such, I find that the tenant has proven that the landlord breached section 27 of the Act.

Section 32(1) of the Act states that

> A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

While I do not have much information as to the age, character, and location of the rental unit, the photographs depict a rental unit with a moderate level of black mold. Black mold, with the scientific name of *stachybotrys chartarum,* has long been documented as causing health problems in humans and animals. While the tenant did argue that the black mold put him at increased risk, there was no evidence that his health was actually compromised.

As such, taking into consideration the evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not proven that the landlord breached the Act simply because of the existence of black mold and the landlord's failure to do anything about it.

Finally, as for the door that would not shut, I note that section 30(1) of the Act states that a landlord **"**must not unreasonably restrict access to residential property by [. . .] the tenant of a rental unit that is part of the residential property."

In this case, the tenant's access *out* of the residential property and the rental unit itself was so restricted that the tenant had to call the fire department to let him out. The landlord had been told about the door closure and opening issues but failed to do

anything about. A tenant should not have to live in a rental unit without a working, properly locking entrance door.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim that the landlord breached the Act.

But for the landlord's failure to act on the laundry facilities being out of order and the door being repaired, the tenant suffered a loss in the value of his rent.

Regarding the monetary damages sought, the tenant calculates the loss at three times his rent, based on the three months that he suffered the various issues. While the loss of the laundry for this period of time is compensatory, the tenant has not proven the amount of what the loss of laundry facilities cost him. For example, there is no documentary evidence of where else he may have laundered his clothes, such as a laundromat. As such, will award only nominal damages in this case.

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I award the tenant nominal damages of $100.00 for the laundry facilities being cut off. Finally, I note that the tenant did not present any evidence of how he attempted to mitigate a loss associated with the laundry services.

Similarly, with the door, the tenant has not established the portion of his claim that ought to be associated with the inoperable door. Again, given that there was no amount of significant loss proven, I cannot award the amount sought. That having been said, the landlord certainly breached the Act by not having a working door, and thus the tenant is entitled to nominal damages in the amount of $500.00. I do find that the tenant attempted to mitigate his loss by contacting the landlord, who did nothing.

In summary, I award the tenant a total of $600.00.

Conclusion

I grant the tenant's application, in part.

I grant the tenant a monetary order in the amount of $600.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, 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 Act.

Dated: May 19, 2020

Residential Tenancy Branch