



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, PSF, RP, FFT, OLC**

Introduction

This hearing was scheduled to deal with a tenant's application for orders for repairs, services or facilities required by law or the tenancy agreement, compliance with the Act, regulations or tenancy agreement; and, authorization to reduce rent payable.

Both parties appeared or were represented at the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, I explored service of hearing documents and evidence upon each other.

The tenant sent the proceeding package to the landlord's former agent via email on April 8, 2020. The landlord's former agent confirmed receipt of the proceeding package via email on April 10, 2020.

The tenant testified that she placed her evidence on a thumb drive, including many videos, and sent it to the landlord via regular mail addressed to the landlord's office on April 8, 2020. The landlord's agent and former agent testified that they did not receive a thumb drive from the tenant. The tenant did not seek to confirm the landlord's agent was able to access, view or hear the content on the thumb drive and assumed the email she received on April 10, 2020 was a confirmation they had received the thumb drive. Where a recipient indicates they did not received materials, the person sending the materials bears the burden to prove the materials were served. While regular mail is an acceptable method of service, regular mail does not offer any confirmation that it was delivered or received like registered mail does. Also, a party sending digital evidence is required to confirm the recipient could access, see and/or hear the content on the digital device. Ultimately, I was not satisfied the landlord had received the

tenant's materials that were mailed on a thumb drive or the tenant met her obligation to confirm the landlord could access, view and/or hear the evidence contained on a digital device. Therefore, I did not admit the tenant's evidence for further consideration.

The landlord had submitted evidence to the Residential Tenancy Branch in response to the tenant's application but did not serve it upon the tenant. Accordingly, I did not admit the landlord's materials into evidence for further consideration.

The tenant submitted an Amendment to an Application for Dispute Resolution to the Residential Tenancy Branch on May 12, 2020. The tenant sent it to the landlord's agent via email on the same date. The landlord's agent confirmed that she received the email from the tenant but testified that the Amendment was in a PDF embedded in the body of the email and she could not open it. As such, the landlord has not seen the tenant's Amendment.

The tenant stated that she sought to increase her claim for compensation by way of the Amendment. I noted that the Amendment did not indicate the tenant was seeking to add amounts to the claim she originally made when she filed and that, the way it was completed, it appeared to be an attempt to replace the claim she originally made. The landlord stated she was uncertain as to the amount sought by the tenant by way of the Amendment since she had not seen it. In any event, I declined to hear the tenant's monetary claim or request for rent reduction for several reasons, including: the Amendment did not clearly indicate it was attempt to increase the claim rather than replace the original claim; the Amendment was not received at least 14 clear days before the scheduled hearing date (it would have to be received by the landlord no later than May 11, 2020); and, the landlord was not able to view the Amendment.

Considering both parties were not in receipt of the evidence submitted by the other party, and the tenant's Amendment was defective, I informed the parties that I was prepared to try to resolve the dispute concerning the tenant's request for orders for repairs, services or facilities and compliance based on their oral submissions. The parties were largely in agreement as to the kitchen repairs that are required and have not been completed. As such, I have issued orders to both parties in this decision with a view to resolving the kitchen repair issues but the tenant's request for monetary compensation and rent reduction is dismissed with leave to reapply.

Issue(s) to be Decided

1. Is it necessary and appropriate to issue orders for repairs, services or facilities, and/or compliance to the parties?
2. Award of the filing fee.

Background and Evidence

The tenancy started in November 2011 and the tenant is currently required to pay rent of \$1924.00 on the first day of every month. The rental unit was equipped with a kitchen that included: a sink, dishwasher, fridge, range, countertop(s) and upper and lower cabinets. The rental unit is a two bedroom apartment approximately 820 sq. ft. and occupied by the tenant and her child.

On February 3, 2020 the kitchen was largely disassembled as a result of leaking water. On that date, the sink and dishwasher and the plumbing components were removed, the lower cupboards and countertop were removed, portions of the walls and floor were removed, and the fridge was moved to the living room. The fridge remains functional in the living room. The range remains functional in the kitchen. The tenant purchased a table to use in place of the countertop but there is no sink or plumbing in the kitchen to wash dishes and contents of the lower cupboards are in the living room. The kitchen remains in the same condition as it did on February 3, 2020.

In requesting orders for repairs, services or facilities and compliance, the tenant seeks to have the kitchen fully restored and points out that it has been months since it has been taken apart. The landlord's agent acknowledged that the kitchen needs to be repaired and restored and she stated that she is working on accomplishing this. The landlord's agent submitted that the delay in accomplishing the work is due to challenges in securing contractors for this repair and other areas of the residential property, the contractor that was chosen refused to do any more work when the COVID-19 pandemic struck, and the landlord's agent was on sick leave for a period of time.

The landlord's agent submitted that finding a new contractor is proving challenging and the landlord is not yet in a position that it can commit to a completion date. However, last week the landlord's agent sent a contractor over to the rental unit to view the status of the kitchen and take measurements but the contractor communicated to her that the tenant was denying him entry into the rental unit. The landlord's agent acknowledged

that she had not given the tenant advance notice that the contractor would be seeking entry into her unit.

The tenant stated the “contractor” that contacted her last week was actually a “handyman” that she is familiar with but that he communicated to her, via text, that he did not represent the landlord or the property manager so she did not understand what he was there to measure. Also, she does not have the ability to authorize him to do any work on the unit so she told him to deal with the landlord and/or property manager. For ease of reference, I have identified this person as the “handyman” for the remainder of this decision.

The tenant stated that she asked the landlord to use a different contractor than the handyman since she is “uncomfortable” with him working on her kitchen. The tenant indicated that events that occurred over several years have led her to “uncomfortable”. I asked the tenant to describe the most severe events/circumstances that have resulted in her feelings of uncomfortableness. The tenant described events that indicate the tenant views the handyman as incompetent in completing repairs. She also described him as “rude”. The tenant stated she does not want to be around the handyman and does not want him in her apartment if she is not there. The tenant requested the landlord’s agent accompany the handyman if he is going to be doing the kitchen repair job.

The landlord’s agent stated the landlord has used the “handyman” for several projects and they were quite satisfied with his work. The landlord’s agent also stated that she is willing to accompany the “handyman” to inspect and measure the tenant’s kitchen but that she cannot watch him work for several hours per day and several days that would be required to complete this job.

Analysis

In this case, it is undisputed that the rental unit was equipped with kitchen facilities and many aspects of the kitchen were dismantled on February 3, 2020 and remain in that same condition. It is also undisputed that the tenant is entitled to a functional kitchen and the landlord has an obligation to undertake repairs to restore the kitchen.

I accept that the tenant has endured a long period of time without a kitchen and I find it reasonable to expect that the landlord restore the kitchen on a priority basis and as soon as possible, even if doing so costs more than waiting for a less expensive contractor or a particular contractor.

Given the current COVID-19 pandemic, I also accept that the landlord is having increased challenges in having to replace the original contractor with a new contractor willing to do the work in the rental unit. However, it appears the landlord has a potential contractor willing to do the work (the “handyman”), conditional upon viewing the kitchen and taking measurements, but that he has yet to enter the rental unit to assess the situation.

I attribute the handyman’s inability to gain entry into the rental unit last week, at least in part, due to the landlord’s failure to issue the tenant a notice to enter. As I informed the parties during the hearing, the landlord and the tenant have obligations and entitlements with each other but that relationship does not exist between the tenant and the contractor. As such, it is upon the landlord to determine the date/time the contractor requires entry into the rental unit and it is upon the landlord to communicate that to the tenant in a way that complies with section 29 of the Act. The tenant concerns with respect to the contractor’s conduct or actions would be brought to the landlord’s attention by the tenant, not to the contractor directly.

Upon hearing from the tenant, I find I am unsatisfied that she has a basis to deny entry to the potential contractor/handyman. Rather, if the tenant views the handyman’s work as insufficient or incompetent, she has a remedy, which is to report it to the landlord so that the landlord may take appropriate action to rectify the issue. As far as the tenant viewing the handyman as “rude”, I am of the view this can be rectified by there being no communication between the tenant and the handyman.

In light of all of the above, I issue the following orders to the parties:

1. The landlord is to undertake all reasonable, appropriate and necessary steps to facilitate the completion of the kitchen repair/restoration in a timely manner. This includes installation of: lower cupboards, countertop(s), sink and dishwasher and appropriate plumbing parts, wall and flooring surfaces; and, relocating the fridge in to the kitchen.
2. In order to give a contractor/handyman access to the rental unit, the landlord must do so in a manner that complies with section 29 of the Act, which is to either: gain the tenant’s consent to enter or give the tenant a 24 hour written notice to enter that includes the date(s), time(s) and purpose(s) of entry.
3. Upon receipt of a proper notice of entry, the tenant must not interfere or deny entry to the landlord or landlord’s contractor/handyman.

4. If the landlord seeks to have the handyman referred to in this decision inspect the kitchen and take measurements so as to determine if he is capable or willing to take on the project the landlord's agent shall accompany the handyman during this entry into the rental unit.
5. If the landlord choses to use the handyman referred to above to complete the kitchen repair/restoration:
 - a. The landlord is to instruct the handyman to not speak, text or otherwise communicate to the tenant. Rather, the handyman's authority to enter the rental unit and perform repairs is to come from the landlord or landlord's agent. The landlord is to instruct the handyman that if he has any issues with the tenant he is to communicate this to the landlord, but not to the tenant directly.
 - b. I order the tenant to not speak, text or otherwise communicate with the landlord's handyman while the kitchen repair/restoration project is underway. If the tenant has issues with the handyman's work or conduct, she is to report the matter to the landlord or landlord's agent for the landlord to take appropriate action.
 - c. If the tenant is feeling "uncomfortable" being around the landlord's handyman while he is working on the kitchen repair she is not required to be in the rental unit or if she choses to remain in the rental unit it will be upon her to be accompanied by someone of her choosing that is willing to accompany her.

If the parties fail to comply with my orders above, they may file another Application for Dispute Resolution for further remedy.

Given the time that has passed without progress on the kitchen repair, I award the tenant recovery of the \$100.00 filing fee paid for this application. The tenant is authorized to deduct \$100.00 from a subsequent month's rent to recover this award.

Conclusion

I have issued orders to both parties with respect to completion of a kitchen repairs.

The tenant is awarded recovery of the \$100.00 filing fee and is authorized to deduct \$100.00 from a subsequent month's rent payment to recover this award.

The tenant's monetary claim and request for rent reduction is dismissed with 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: May 28, 2020

Residential Tenancy Branch