



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, FFT

Introduction

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

- an order requiring the landlord to carry out repairs, pursuant to section 33;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

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

Preliminary Issue – Service of Documents

The landlord confirmed receipt of the tenants' application and evidence (the materials). In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the materials.

The tenants confirmed receipt of the landlord's evidence. The tenants affirmed they only received one package and they should have received three packages, one for each applicant. The tenants affirmed the three of them had enough time to review the evidence provided by the landlord.

As the three tenants were able to review the evidence provided by the landlord, considering Rule of Procedure 6.1 and principles of fairness, I find they were served in accordance with sections 88 and 89 of the *Act*.

The tenants affirmed the evidence submitted by the landlord named 'Text Messages' is a forged document. The tenants affirmed they did not receive the text message dated March 23, 2020 and the print screen submitted by the landlord does not show the emojis at the bottom of the screen. The landlord affirmed he sent the text message on March 23, 2020 from an area with poor telephone reception and the tenants may have not received it. The landlord also affirmed his cell phone does not display emojis.

I find the print screen named 'Text Messages' submitted by the landlord is not a forged document. I accept all the landlord's evidence.

Preliminary Issue – Application for Repairs Dismissed

Both parties agreed the repairs required by the tenants were successfully completed by the landlord on June 07, 2020.

The application for an order requiring the landlord to carry out repairs is moot, as the repairs have already been completed.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for the landlord to carry out repairs.

Issues to be Decided

Are the tenants entitled to:

1. a reduction in rent for services or facilities agreed upon but not provided?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of the tenants' submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed the tenancy started on August 01, 2019 and the tenants are currently residing in the rental unit. Monthly rent is \$3,450.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$1,725.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

Both parties also agreed on March 15, 2020 the tenants informed the landlord the window coverings (blinds) were not operating and on June 07, 2020 they were repaired.

The tenants affirmed there are 13 window in the rental unit. At first 3 window coverings were not operating, as they could not be moved. At a later point there were up to 6 window coverings not operating. The tenants could not manually operate them.

The tenants affirmed they had issues with lack of privacy in the rental unit, as the window are very large and they could not close the window coverings. The rental unit was also overly exposed to the sun and it was harder to control the temperature. The tenants work in the living room and because the window coverings could not be closed there was glare on their computer screens because they could not limit exposure to the sun.

The tenants affirmed that multiple window covering repair companies were operating from March 15 to June 07. An email dated June 09, 2020, sent by company BB, states: "As per our discussion [company name] was doing house calls throughout the pandemic in the lower mainland to service blinds that we have manufactured."

The tenants sent a letter to the landlord dated April 29, 2020 asking for the repairs. They filed this application on May 19, 2020 asking for a rent reduction of 50% because "View is the only reason we entered into this tenancy and that being obstructed effects our qualify of life and significantly hinders appeal".

The landlord affirmed there were only 3 window coverings not operating. The text message received from the tenants on March 15, 2020 states: "one of the blinds has stopped working in the living room."

The landlord affirmed the rental unit is on the 13th floor and there are no buildings around the rental unit, thus, the window coverings did not affect the privacy of the tenants. The landlord affirmed the tenants may have lost the chargers for the window coverings equipment and this may have caused them to stop operating. The tenants affirmed this did not happen.

The landlord was not able to repair the window coverings earlier because the company that provided the repairs was not operating during the Covid19 pandemic. An email dated June 02, 2020, sent by window coverings repair company BB states: "Due to the

Covid19 issue, we where working on a skeleton staff any where only installing into new buildings.”

Photographs showing the window coverings were submitted into evidence.

Analysis

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.

Section 32(1) of the Act states 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.

Residential Tenancy Branch Policy Guideline 01 states the landlord is responsible for maintaining window coverings in a reasonable state of repair.

I find the landlord’s testimony about Covid19 causing the delays making the repairs was too vague. Both emails submitted are from company BB and are contradictory. The one dated June 09, 2020 states were conducting business during the pandemic, the prior email dated June 02, 2020 states they were only only installing window coverings in new buildings.

The parties agreed that there were 3 window coverings not operating. The tenants did not provide any documentary evidence of the number of window coverings not operating later increased to 6. Thus, I find that only 3 of the 13 window coverings were not operating.

The parties offered conflicting testimony about the reason why the window coverings were not operating. The landlord did not provide any documentary evidence to support his claim that the tenants may have lost the charger for the window covering equipment.

I find the landlord failed to comply with section 32(1) of the Act and the tenancy agreement by not providing 3 operating window covering from March 15 to June 07,2020.

Pursuant to section 7(2) of the Act, the tenants were obligated to mitigate their damage or loss due to the landlord's delay in repairing the non-operating window coverings. Residential Tenancy Branch Policy Guideline 05 provides additional information about the duty to minimize the loss:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find that the tenants acted to minimize the impact of the non-operating window coverings by contacting the landlord several times and filing an application with the Residential Tenancy Branch to cause the landlord to make repairs. In response, the landlord did not offer timely efforts to provide the necessary repairs in the rental unit as required by section 32(1) of the Act.

Section 65(1)(f) of the Act authorizes me to order a reduction in the tenant's future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement due to the landlord's failure to comply with section 32(1).

I find the non-operating window coverings do not cause a significant impairment in the tenants' quality of life, as the tenants claim. I find the value of the tenancy was reduced due to the landlord's failure to provide operating window coverings by 10%. Thus, I order a rent deduction of 10% from March 15 (the date the landlord learned the window coverings were not operating) to June 07 (the date the repairs were completed).

As such, the tenants are entitled to reduce rent to the landlord by \$ 966.00 ($3,450.00 / 30 = 115.00$; 17 days in March, full months of April and May, 7 days in June, $\times 0.1$)

As the tenants were success with their application, pursuant to section 72 of the Act, I authorize them to recover the \$100.00 filing fee.

Conclusion

Pursuant to section 65(f) of the Act, I authorize the tenants to deduct the amount of \$1,066.00 from future rent.

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: June 17, 2020

Residential Tenancy Branch