



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Balay management LTD and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on June 17, 2020 (the "Application"). The Tenant applied for the following claims, pursuant to the *Residential Tenancy Act* (the "Act"):

- a rent reduction;
- an order for regular repairs;
- an order that the Landlord comply with the Act, Tenancy Agreement, or Regulations; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent A.G. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a rent reduction, pursuant to Section 65 of the *Act*?

2. Is the Tenant entitled to an order for regular repairs, pursuant to Section 32 of the *Act*?
3. Is the Tenant entitled to an order that the Landlord comply with the *Act*, Tenancy Agreement, or Regulations, pursuant to Section 62 of the *Act*?
4. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on April 1, 2014. The Tenant currently pays rent in the amount of \$1,082.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$465.00.

The Tenant has applied for an order for regular repairs and for an order that the Landlord comply with the *Act* in relation to several deficiencies in his rental unit and the rental property. The Tenant acknowledged during the hearing that the Landlord has repaired the most concerning items, however, several remain unaddressed. The Tenant provided a list of items he is seeking the Landlord to repair;

- *Cabinets are to old and falling apart. Maintenance has to take place or be replaced.*
- *Apt has never been painted by the landlord from the inside. (I did part of it at my own cost). Should be painted every 4 years.*
- *Building hasn't been painted (outside walls) at least since I moved in but it looks like from what I see that there hasn't been any paint work done on the building for at least 15 years.*
- *Outside walls should be painted every 8 years.*
- *Washroom flooring tiles have not been replaced and are aged probably since the construction of the building (50 years old). Should be replaced every 20 years.*
- *Kitchen plastic floor tiles have not been replaced for at least 30 years. Landlord should replace the tiles there as well every 20 years.*
- *Balcony railings has not been painted or maintained for more than 15 years. Rusted and dangerous. Should be maintained every 15 years.*
- *Windows and window framing are older than 20 years at least, they should be replaced same with patio doors/framing according to Useful Life of Building Elements Guideline 40.*
- *Sealer on windows or in bathroom has never been replaced for at least 6 years since I moved in. Should be replaced every 5 years.*
- *Cabinet counters need repairs. Should be replaced every 25 years*

- *Sink sealer need to be replaced on both kitchen and washroom sink.*

During the hearing, the Tenant referred to the Residential Tenancy Branch Policy Guideline 40 which related to the Useful Life of Building Elements as a benchmark for when the items need to be replaced. The Tenant provided pictures of the items he would like to be repaired.

The Landlord's Agent responded by stating that the Landlord is not opposed to repairing several items on the Tenant's list of deficiencies but that given the current pandemic, the Landlord has had difficulties securing contractors to assess and complete the required work.

During the hearing, the parties agreed that the Landlord will take steps to inspect, and complete the necessary repairs to the rental unit, including repairs or replacement of; the bathroom cabinet, kitchen cupboard, and kitchen countertop. The parties agreed that the work would take place on or before August 31, 2020.

The Tenant is also seeking a rent reduction in relation to facilities that were meant to be included in the rent, however, have not been made available at times. The Tenant stated that the Landlord advertised the rental property as having pool and sauna facilities. The Tenant stated that the Landlord has restricted access to the pool as well as sauna currently, as well as for a portion of time last year.

The Tenant is seeking to be compensated for the following;

- *Reimbursed \$550(50%) for each month (9 months so far) since October 2019 where the landlords willingly neglected repairs for the apartment including the replacement of my carpet that is a health hazard.*
- *Have my rent reduced by \$550(50%) until all the issues are fixed including the sauna.*
- *Reimbursed for the value that I have been losing due to missing sauna services for the last years according to the arbitrator's judgment. Starting from the beginning of my residency would be 74 months, starting from when witness observed that would be approx. 3 years 36 months. 10% of the rent per month could be fair.*
- *Compensated a lump sum payment of \$5000 for emotional, mental and physical distress and issues that this process has created. As it has been a very stressful situation for me for the last 9 months, where I cannot sleep well due to anger, frustration and stress, I feel uncomfortable and not safe in my apt, which should*

be a healthy space of safety and rest. My respiratory health was and is still is being effected. I am sometimes waking up with dry blood in my nose, that might be due to the old carpet. As for all the mental energy and time that I have put into this 9 month long argument, that would have not taken place in the first place, if the landlord was following the law, as well as all the potential future hassle I may have to experience due to this argument from the landlord.

The Landlord also stated that the pool and sauna are available to Tenants to use generally, however, there have been instances where these facilities require maintenance and repairs, therefore, they were closed for some time for that purpose. Furthermore, the Landlord's Agent stated that the Landlord has temporarily restricted all access to the facilities given the current pandemic. The Landlord's Agent stated that the facilities would reopen once it is safe to do so.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing and on a balance of probabilities, I make the following findings:

I accept that during the hearing, the parties agreed that the Landlord will take steps to inspect, and complete the necessary repairs to the rental unit, including repairs or replacement of; the bathroom cabinet, kitchen cupboard, and kitchen countertop. The parties agreed that the work would take place on or before August 31, 2020.

The Tenant is also seeking compensation in the amount of \$13,000.00. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 32(1) of the Act states that 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 the tenant.*

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is seeking to be reimbursed 50 percent of his rent for each month in which the Landlord did not complete the repairs he was requesting to be replaced. In his testimony and documentary evidence, the Tenant made reference to the Residential Tenancy Policy Guideline 40 which refers to the useful life of building elements. In this case, I find the Tenant was under the impression that the guideline offered an expiry date for such building elements. Instead, I understand policy guideline 40 to be used when applied to damage(s) caused by a tenant, the arbitrator may consider the useful life of a building element and the age of the item.

I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord breached their obligations under Section 32 of the *Act*. I further find that the Tenant has provided insufficient evidence to demonstrate that he has suffered a loss as a result of the repairs not taking place for a period of time after submitting his request. As such, I find that the Tenant is not entitled to monetary compensation for past or future rent reduction relating to the repairs referred to in the Tenants Application.

The Tenant is also seeking 10 percent rent reduction for the past 74 months as a result of not having access to the sauna facilities. In this case, I accept that the Landlord's Agent's testimony that the pool and sauna facilities have been restricted during the state of emergency.

According to the Order of the Minister of Public Safety and Solicitor General Emergency Program Act, Ministerial Order No. M195;

Tenant's right of access restricted 6 (1) It is not unreasonable under section 30 (1) [tenant's right of access protected] of the Residential Tenancy Act for a landlord to restrict access to common areas of the residential property by;

- (a) a tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by a tenant, page 4 of 6 if the restriction is necessary
- (c) to protect the health, safety or welfare of the landlord, the tenant, an occupant or a guest of the residential property due to the COVID-19 pandemic,
- (d) to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the Emergency Program Act, or
- (e) to follow the guidelines of the British Columbia Centre for Disease Control or the Public Health Agency of Canada.

(2) Despite subsection (1), a landlord must not prevent or interfere with the access of a tenant, another occupant of the rental unit or a tenant's guest to the tenant's rental unit.

(3) If a landlord has terminated or restricted access to common areas of a residential property and one or more of the circumstances set out in subsection (1) (c) to (e) applies, the director must not grant an order that reduces the rent or any other order for monetary compensation resulting from the termination or restriction of access.

(4) Subsection (3) of this section applies to any application for dispute resolution unless the director has already held a hearing on an application for dispute resolution.

(5) Subsections (3) and (4) of this section apply despite any section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement, including sections 27 [terminating or restricting services or facilities], 62 (3) [director's authority respecting dispute resolution proceedings], 65 (1) [director's orders: breach of Act, regulations or tenancy agreement] and 67 [director's orders: compensation for damage or loss] of the Residential Tenancy Act.

In this case, I find that that the Landlord is permitted to restrict the Tenant's access to common areas in the rental property such as the pool and sauna facilities without being required to compensate the Tenant for as a result of the restriction during the state of

emergency. The Tenant stated that the pool and sauna had been previously restricted as well for periods of time. I accept that the Landlord's Agent stated that these facilities required maintenance and repairs at times, which is reasonable to expect that the facilities would be temporarily unavailable during these times. As such, I dismiss the Tenant's claim for compensation for restricted access to facilities without leave to reapply.

Lastly, the Tenant is claiming for a lump sum payment of \$5,000.00 for emotional, mental and physical distress. In this case, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord has breached the Act, nor has the Tenant demonstrated that he has suffered a loss, or how he has arrived to the amount of \$5,000.00 in compensation. I find that the Tenant is not entitled to monetary compensation and dismiss the Tenant's claim without leave to reapply.

As I have determined that the Tenant provided insufficient evidence to demonstrate that the Landlord has breached the Act, I find that the Tenant is not entitled to the return of the filing fee paid to make the Application.

Conclusion

The parties agreed that the Landlord will take steps to inspect, and complete the necessary repairs to the rental unit, including repairs or replacement of; the bathroom cabinet, kitchen cupboard, and kitchen countertop. The parties agreed that the work would take place on or before August 31, 2020.

The remaining portions of the Tenant's claims are dismissed 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 *Residential Tenancy Act*.

Dated: July 24, 2020

Residential Tenancy Branch