



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: RR, RP, OLC, MNDCT, FFT

Introduction

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

- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

All parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As the parties or their representatives were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenants' application and evidentiary materials. The landlord did not submit any written evidence for this hearing.

Preliminary Issue—Amendment to Tenants' Application for Monetary Compensation

Although the tenants had applied for a monetary order of \$6,647.00 in their initial claim for losses or money owed associated with this tenancy, since they applied they have changed the monetary amounts to include additional monetary claims that were not included in the original application.

The tenants confirmed that they have not served the landlord with any formal amendments to their application.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

It was undisputed that the tenants had failed to provided the landlord or the RTB with an Amendment to their Application for Dispute Resolution.

No amendments were received in accordance with RTB Rule 4.6. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if they chose to do so. While the respondent may have been served with new monetary worksheets and further evidence, no formal amendments have been filed or served on the respondent.

Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, I do not allow the tenants' increased monetary claim as summarized in the updated Monetary Worksheets. Only the original claim may be considered for this hearing.

The tenants confirmed that they were withdrawing their application with the exception of their application for a rent reduction and recovery of the filing fee. Accordingly, the hearing proceeded to address the tenants' application for a rent reduction and recovery

of the filing fee. The remainder of the tenants' application was cancelled, with leave to reapply. Liberty to reapply is not an extension of any applicable limitation period.

Preliminary Issue: Mutual Agreement to End Tenancy

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and agreed to the following final and binding settlement:

1. Both parties entered into a mutual agreement that this fixed-term tenancy will end on August 31, 2020, without penalty. The landlord agreed that the tenants would not be responsible for liquidated damages nor loss of rent associated with the early end of the fixed-term tenancy.
2. Both parties agreed that the tenants would be provided a rental unit for use and occupancy only for the month of September 2020, in the same building, without any monthly rent required for the month of September 2020.
3. Both parties agreed that the landlord would provide assistance with helping the tenants move to the rental unit referenced in condition #2. If possible, the landlord agreed to give the tenants access to this rental unit as soon as possible to enable to vacate their current rental unit.
4. Both parties agreed that the tenants' security and pet damage deposits would be dealt with upon final move out in September of 2020, in accordance with the *Act*.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

Issue(s) to be Decided

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the cost of the filing fee from the landlords for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on October 1, 2019, with monthly rent set at \$1,947.00, payable on the first of every month. The landlord collected a security deposit and pet damage deposit in the amounts of \$950.00 each deposit.

The tenants are seeking a 50 percent rent reduction for the months of June, July, and August 2020 for the landlord's failure to address repairs in their rental unit. The tenants testified that they have had issues with a leak in their rental unit since May 27, 2020, and the matter has still not been resolved. The tenants testified that the water damage has caused mould in their rental unit, and they have suffered a significant loss of enjoyment of their rental unit as they have to closely monitor the containers used to capture the leaking water in their rental unit. The tenants testified that there has also been damage to their personal belongings, including their furniture.

The tenants included photos, as well as a detailed chronology of the events that have taken place May 27, 2020. The tenants testified that despite informing the landlord of the issue in May of 2020, and communication with the landlord including a demand letter, the landlord has failed to properly address the matter. The tenants also referenced other unresolved repairs such as the dishwasher.

The landlord's agent acknowledged that they had responded as soon as they received the tenant's email dated May 27, 2020, which was forwarded to them from the previous property manager. The landlord's agent testified that the caretaker attempted to arrange access on June 1, 2020 to investigate, and there was a delay until June 16, 2020 as the tenants were away. The landlord's agent testified that the tenants had informed them that no water was actively leaking on June 16, 2020, and the landlord had to investigate the matter further as other units were also affected. The landlord's agent testified that he was away for 4 weeks in July 2020, and on August 7, 2020 the landlord dispatched had dispatched a contractor who determined the need for mould abatement, and tested the site for asbestos. The landlord's agent testified that they had only recently received the scope of work for the repairs.

The tenants responded that they were away in June, and wanted assurance that anyone accessing the rental unit would follow safety protocols considering the pandemic. The tenants also felt that the landlord's 4 week leave did not justify the delay.

Analysis

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *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.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

I have considered the testimony of both parties, and I find it undisputed that the tenants have been residing in their rental unit since May 27, 2020, and as of the hearing date the landlord has not completed repairs. Although the landlord’s agent attended the hearing, and provided explanations for the delay, I am not satisfied that the landlord has taken the necessary steps to fulfil their obligations under section 32 of the *Act* as stated above. I find that although the tenants were away, this was for a short period in June of 2020, and since their return repairs have still not been completed as of the hearing date. Furthermore, I find that despite the investigation and testing that may be required to address the matter, the tenants suffered a reduction in the enjoyment of their rental unit as they had to endure the ongoing leak in their rental unit, and possible damage to their personal belongings. I accept the tenants’ testimony that they had to closely monitor the containers in order to manage the leak themselves, and furthermore I find that the landlord failed to provide sufficient evidence to ensure that proper mould abatement was undertaken to ensure the tenants’ health and safety. I also find that the 4 week leave taken by the landlord’s agent does not justify the landlord’s failure to address the issue in a timely manner.

I find that the landlord has failed to fulfill their obligations under section 32 of the *Act*, and the tenants are entitled to a rent reduction for the period of May 27, 2020 up to, and including the date of the hearing August 17, 2020. I find the tenants’ request for a 50 percent reduction to be reasonable, and accordingly, I allow the tenants a monetary equivalent to 50 percent of the rent for June, July, and August 2020.

I allow the tenants to recover the filing fee for this application.

Conclusion

During the hearing, the tenants confirmed that they were withdrawing their application with the exception of their application for a rent reduction and recovery of the filing fee. Accordingly, the hearing proceeded to address the tenants' application for a rent reduction and recovery of the filing fee. The remainder of the tenants' application was cancelled, with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

To give effect to the settlement reached between the parties, I issue an Order of Possession to the landlord, which is to take effect by September 30, 2020. The landlord is provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants do not vacate the rental unit referenced in the settlement agreement by September 30, 2020. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the tenants' rent reduction in the amount of \$2,920.50 as well as the recovery of the filing fee for this application. I issue a Monetary Order in the tenants' favour for \$3,020.50. The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 18, 2020

Residential Tenancy Branch