Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OLC, RP, RR, MNDCT

Introduction

The tenant seeks the following relief under the *Residential Tenancy Act* (the "Act"):

1. an order that the landlords comply with the Act, the *Residential Tenancy Regulation* (the "Regulation"), or the tenancy agreement, pursuant to section 62 of the Act;
2. an order that the landlords conduct regular repairs, pursuant to sections 32 and 62 of the Act;
3. an order that the rent be reduced for repairs, services, or facilities agreed to in the tenancy agreement but not provided, pursuant to section 65 of the Act; and,
4. compensation for various matters, pursuant to section 67 of the Act.

The tenant filed an application for dispute resolution on July 14, 2020 and a dispute resolution hearing was held, by teleconference, on August 20, 2020. The tenant, a supporting friend for the tenant, the corporate landlord's agent, and the actual landlord (the property owner) attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the tenant entitled to an order under section 62 of the Act?
2. Is the tenant entitled to an order under sections 32 and 62 of the Act?
3. Is the tenant entitled to an order under section 65 of the Act?
4. Is the tenant entitled to compensation under section 67 of the Act?

Background and Evidence

This tenancy began on October 15, 2019, and the tenant took possession and moved in shortly thereafter. Monthly rent is $1,600 and the tenant paid an $800 security deposit. A copy of the written residential tenancy agreement was submitted into evidence. It should be noted that the tenancy agreement includes parking as being included in rent.

In respect of the property, the rental unit is a house situated on 0.8 acres of land. The house has a new roof and new windows. On the land are 4-5 outbuildings, which the tenant is free to use. However, the tenancy agreement is solely for the house, and everything else on the land remains within the control of the landlord. The house is on a septic and well system.

I will outline the various matters below as they were addressed during the hearing. First, the tenant testified that the carport, which was attached to the house, collapsed. The landlords have not cleaned up the mess, the tenant explained. She would like the mess cleaned up. In addition, she would like compensation (calculated at 1/5 of the rent) for the loss of the carport. However, she admitted that given the 0.8-acre size of the property, there is “plenty of places to park.”

Second, the tenant took care of snow removal for access and egress to the house but would like to the landlords to take responsibility for the snow load which may occur on the top of the house. Such a snow load affects the structure of the house, which is, from the tenant’s perspective, the landlords’ responsibility.

Third, the tenant would like the water pump updated, as it “is insufficient.” It needs replacing and requires a heater to ensure it keeps working during cold months. She said that there was a period of weeks where the water was a trickle. Though, she was not entirely certain as to whether this trickle was the result of the pump freezing up. That said, she stressed that she is entitled to a reliable water source year-round.

Fourth, the tenant would like some sort of solution to the lack of electricity that might occur during one of the many power outages that that rural community suffers. There was, she explained, a period of over a week during Christmas when she was without heat. The propane-fueled furnace requires electricity, and she would like something as a back up to power the fridge, stove, water pump. “Things that are critical to life,” she summarized. The tenant said that there might be alternatives, but that a generator might be one solution.

Fifth, the tenant would like a hood fan installed over the propane stove. While there was no hood fan when she took possession of the rental unit, she said that “there is no venting.” There was a hold in the wall where a vent might be installed, but “it was stuffed with newspaper.”

Sixth, the tenant seeks compensation for the loss of rent from tenants who had apparently moved out in the spring “because of various issues, including the loss of heat.” She also seeks compensation for additional stress from having to deal with the landlords over a period of one month.

Finally, the tenant wants the landlords to be responsible for changing the water filters. It was her recollection that she was told, verbally, that the landlords would take care of the water filters.

In response, the landlords testified that the water pump now has a heater in place and “all is well.” The landlord’s agent stated that for all issues that the tenant ever brought to their attention, they gave those issues “immediate attention.” Continuing, the landlord’s agent stated that the landlord will accept responsibility for removing snow from the roof of the house.

Regarding the hood fan, the agent explained that there was no hood there when the tenant moved in and indicated to the tenant that such a hood fan “was *not* to be installed.”

As for the request for a generator (or some alternative solution to the power outages), the landlord’s agent and the landlord explained that the rural area in which the rental unit is located has its own microclimate, and often prone to severe weather. They said that they had an extensive conversation with the tenant about the reality of living in this location. The tenant apparently understood “what it’s like to live rurally.”

While neither party said anything further, I must infer from their testimony that the parties all understood that life in this rural location would bring with it some difficult living, including power outages and heavy snow.

Finally, the landlord’s agent testified that “it’s a presumption that” the tenant would be responsible for the water filters, in terms of changing or replacing them.

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.

1. Application for an order under section 62 of the Act

The tenant seeks to have the landlords clean up material from the collapsed carport.

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 a tenant.

In this case, the tenant presented no evidence that the landlords, by not cleaning up a mess in the area where the carport used to exist, breached the Act. Therefore, I cannot order the landlords to take action for something that has not been proven to be their responsibility. However, it sounds, based on the testimony of the parties, that the landlords are building an awning, which presumably will lead to the removal of any detritus from the collapsed carport. In examining the photos of the before and after state of the carport, there would be a fair amount of material to remove.

Regarding the water pump, the tenant provided no evidence establishing that the water pumps actually needs replacing. And, no evidence to show how the pump does not comply with health, safety or housing standards (and thus that it is not in compliance with section 32(1)(a) of the Act). The landlord's agent did state that the pump has a heater now, and that "all is well." However, whether all's well will end well will only be known once the cold weather sets in. The operation of the pump and the obligation of the landlords to ensure a reliable source of water is provided to the tenant, even during the winter, cannot be overemphasised. Given the above, however, I do not find that the tenant has established that the landlords are in breach of the Act and as such I do not issue an order under this section of the Act.

Regarding the hood fan, the tenant presented no evidence that the absence of a hood fan breaches health or safety requirements under section 32 of the Act. While a vented hood over a gas stove is often desirable, other means of venting potentially harmful carbon dioxide buildup includes the opening of doors or windows. Whether this is something that is feasible in the house I do not know.

However, in the absence of any scientific or technical assessments made of the kitchen, I cannot find that the absence of a hood fan is unsafe or unhealthy. As such, I cannot grant an order under the Act ordering the landlords to install a hood fan.

Regarding the request for an electrical generator, or some similar solution, the tenant testified that she is responsible for utilities. Utilities therefore include electricity. Therefore, the landlords are not legally responsible for the tenant's electricity, nor for finding a solution to power outages. Any issues related to power outages remain solely between the contractual relationship between the tenant and the power company. Given the above, I do not grant an order under the Act for the landlords to find a solution to the tenant's power outage issues.

Finally, the landlords have accepted that they will take care of snow removal on the roof, and thus there is no order for me to grant. As an aside, however, I note that on page 7 of the *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises,* it indicates that

> Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow..

In other words, a landlord is generally not responsible for snow clearing. Be that as it may, however, the landlords in this dispute have accepted that they will take on the responsibility for removing snow from the roof.

2. Application for order under sections 32 and 62 of the Act

As outlined in the previous section, there is no evidence that the landlords breached section 32 of the Act. As such, I must conclude that there are no orders to be made that the landlords make regular repairs under sections 32 and 62 of the Act. This aspect of the tenant's application is dismissed.

3. Application for order under section 65 of the Act

The tenant claimed 1/5 of the rent for a period of time since the carport collapsed. Parking is included in the tenancy agreement. She assumed that parking meant just the carport but admitted that there is ample parking on the 0.8 acre property. Moreover, the tenant did not argue that she has, in fact, lost parking. Thus, while the carport option of parking has disappeared, the landlords continued to provide parking and the tenant has been able to continue parking on the property.

Section 27(1) of the Act states that

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

In this dispute, the tenant has not proven that the landlord terminated or restricted the provision of parking. As such, no compensatory relief in the form of a rent reduction or otherwise shall be granted.

4. Claim for Compensation

The tenant claimed additional compensation for the loss of rent from her tenants moving out due to various issues, along with a claim for stress. In this application, however, the tenant provided no evidence from the third-party sub-tenants that proves why they moved out, or that the landlords were responsible for the loss of the tenant’s income. In the absence of any such documentary evidence, I cannot find that the tenant ought to be compensated. She has not, due to a lack of any evidence, proven that the landlords breached the Act that would give rise to a claim for compensation.

In addition, the tenant provided no additional evidence regarding a claim for compensation for stress that may have resulted from her interactions with the landlords. No medical evidence of the alleged stress was submitted, and the tenant did not provide a dollar amount for such a claim.

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 not met the onus of proving her claim for compensation under section 67 of the Act. This aspect of her application is dismissed without leave to reapply.

Conclusion

I dismiss the tenant's application, 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 Act.

Dated: August 20, 2020

Residential Tenancy Branch