Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, LRE, PSF, AAT, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- An order for the Landlord to comply with the Act, regulation or tenancy agreement;
- An order for the Landlord to complete repairs;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- An order for the Landlord to provide services or facilities required by the tenancy agreement or law;
- An order for the Landlord to allow them and their guests access to the rental unit; and
- Compensation for monetary loss or other money owed.

The hearing was convened by telephone conference call and was attended by the Tenant and two agents for the Landlord C.P. and C.Z. (the Agents), all of whom provided affirmed testimony. Although the Landlord was not properly named in the Application, the Agents acknowledged service of the Application and the Notice of Hearing on behalf of the Landlord and agreed that the Landlord was therefore properly served with notice of the hearing, despite not being properly named in the Application. As a result, the hearing proceeded as scheduled. As the parties acknowledged receipt of each other's relevant documentary evidence, I therefore accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, a copy of the decision and any orders issued in their favor will be made available for pick up at the Residential Tenancy Branch. At the request of the Agents, a copy of the decision will be emailed to them at the email address provided in the Application.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing I identified that the Application did not properly name a respondent. The Agents provided me with the correct legal name for the Landlord, which is a named corporation. As there were no objections from the Tenant, the Application was amended to correctly name the respondent.

Preliminary Matter #2

In their Application the Tenant sought multiple remedies under multiple unrelated sections of the Act. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant sought an order restricting or setting conditions on the Landlord's right to enter the rental unit and orders for the Landlord to comply with the Act, regulation or tenancy agreement, complete repairs, provide services or facilities required by the tenancy agreement or law, and to allow them and their guests access to the rental unit, I find that the monetary claim filed by the Tenant is not a priority. As a result, I exercise my discretion to dismiss this monetary claim with leave to reapply.

During the hearing the Tenant indicated that their claim for an order for the Landlord to comply with the Act, regulation or tenancy agreement and either replace their window or grant them authority to replace it themselves is most urgent and important to them. As a result, the hearing proceeded in relation to this claim and the remaining claims by the Tenant were dismissed with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation, or tenancy agreement?

Background and Evidence

The parties agreed in the hearing that a tenancy under the Act exists, and although the Agents mentioned that the Tenant signed a safe and supportive program agreement as the Landlord provides supportive and transitional housing, they specifically acknowledged that a tenancy under the Act exists between the parties which is not excluded pursuant to section 4(f) or any other section of the Act.

A copy of the tenancy agreement was not provided for my review, but the parties agreed that a written tenancy agreement exists, that the month to month tenancy began on July 5, 2018, that rent in the amount of $375.00 is due on the first day of each month, that no rent increases have occurred, and that security and pet damage deposits in the amount of $187.50 each were paid by the Tenant, which the Landlord still holds.

The Tenant stated that neither the building nor their rental unit have windows which can open to provide fresh air, which is a significant health and safety issue as they have health and mobility issues which make them high risk for COVID-19. The Tenant stated that there was also a fly infestation in the building for five months, which caused them illness and significant hardship and discomfort, which would have been easier to deal with if their rental unit, or the building in general, had windows that opened. The Tenant also argued that the lack of opening windows breaches building code and or municipal bylaws and health and safety standards.

As a result of the above, the Tenant sought an order for the Landlord to replace their windows with ones that open or to modify them in such a way as to allow them to open. In the alternative, the Tenant sought authority to have this done themselves at their own cost. In support of their claim the Tenant submitted written submissions, a Dr.’s note, information on flies, and several photographs.

The Agents stated that the Landlord does not own the building in which the rental unit is located and rents it off the owner, which is the municipality in which the building is located. The Agents stated as the Landlord does not own the building, neither they nor the Landlord have the authority to change the windows or to authorize the Tenant to do so themselves.

Analysis

Section 32 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.

Section 62 of the Act states that a I may make any finding of fact or law that is necessary or incidental to making a decision or an order under the Act and/or any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that the Act applies.

Although the Tenant sought either an order for the Landlord to comply with the Act, regulation, or tenancy agreement and replace the window(s) in their rental unit with one(s) that open, or an order allowing them to do this at their own costs, a copy of the tenancy agreement was not submitted for my review. Further to this, neither party made arguments that the tenancy agreement requires the Landlord to provide the Tenant with windows that open. As a result, I do not find that there is any such requirement in the tenancy agreement.

Although the Tenant argued that the absence of opening windows presents a health and safety concern due to COVID-19 and a recent fly infestation in the building, and submitted a Dr.'s note in support of this position, they did not submit any documentary or other evidence showing that rental units must have windows that open in order to comply with health, safety and housing standards required by law. As a result, I am not satisfied that a lack of windows that can be opened represents a breach of section 32(a) of the Act or that the Landlord is obligated to provide the Tenant with windows that open.

Further to this, I find that section 32(b) of the Act specifically requires me to contemplate the age, character and location of a rental unit when making assessments about whether or not a landlord has provided and maintained a residential property or a rental unit in a state of decoration and repair that makes is suitable for occupation by a tenant. While I appreciate that the absence of opening windows presents some level of health risk as well as an inconvenience for this specific Tenant, given their health conditions,

the pandemic, and a recent fly infestation, I am not satisfied that a lack of opening windows makes a rental unit unsuitable for a tenant in general. Further to this, the Tenant rented the rental unit knowing that it did not have windows that open and I accept that the building was likely built this way, as the Tenant argued that none of the windows in the building open. As a result of the above, and considering the character of the building, I am not satisfied that the absence of opening windows in the rental unit renders it unsuitable for occupation.

Based on the above, I am not satisfied that the Landlord is obligated by the Act or the tenancy agreement to provide the Tenant with windows that open inside of the rental unit. As a result, I dismiss their claim for an order requiring the Landlord to do so, without leave to reapply. I also dismiss their claim for an order allowing them to do so themselves, without leave to reapply, as the Agents stated that the Landlord does not agree to this or have the authority to grant such a request as they do not own the building.

Conclusion

The Tenant's Application seeking an order for the Landlord to comply with the Act, regulation, or tenancy agreement and either replace their windows or allow them to do so themselves is dismissed without leave to reapply.

Although the Tenant's claim seeking an order for the Landlord to allow them and their guests access to the rental unit was dismissed with leave to reapply pursuant to rule 2.3 of the Rules of Procedure, in their Application they claimed that they are not allowed to have guests. Although I have made no findings of fact or law in relation to this claim, I provide the following information to the parties in relation to guests, for the sake of clarity and in hopes of preventing a future dispute on this issue. The parties should be aware that pursuant to section 30(1)(b) of the Act, a landlord must not unreasonably restrict access to a residential property by a person permitted on the residential property by a tenant of that property.

Although Emergency Order #M089 and #M195 allow(ed) for restrictions to common areas by tenants and their guests if the restriction was or is necessary 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; 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 to follow the guidelines of the British Columbia Centre for Disease Control or the Public Health

Agency of Canada; both Emergency Orders listed above specifically stated that 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.

Based on the above, the Landlord is therefore cautioned that unreasonably restricting the Tenant's right to have guests or interfering with their guests access to the rental unit may result in a loss of quiet enjoyment by the Tenant and/or administrative penalties of up to $5,000.00 per day pursuant to section 87.4 of the *Act*.

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: September 8, 2020

Residential Tenancy Branch