Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, RP, RR, FF (tenant 1, lead tenant)
RP, PSF, RR, MNDC (tenant 2)
RP, PSF, RR, FF (tenant 3)
OLC, RP, RR, MNDC (tenant 4)
OLC, RP, RR, MNDC, FF (tenant 5)
OLC, RP, RR, FF (tenant 6)

Introduction

This hearing originally convened on July 10, 2020, in response to the joined applications for dispute resolution of the named tenants.

Due to evidence issues presented at the original hearing, the matters were adjourned and scheduled to be reconvened. This was the reconvened and final hearing on the joined applications.

An Interim Decision was entered on July 10, 2020, it is incorporated herein by reference, and should be read in conjunction with this final Decision.

The tenants' applications dealt with various issues for relief under the Residential Tenancy Act (Act).

All tenants applied for a reduction in monthly rent, both past and future rent payments, and for an order requiring the landlord to make necessary repairs to the rental units.

Tenants 1,4,5, and 6 applied for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

Tenants 2 and 3 applied for an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act.

Tenants 2, 4 and 5 applied for compensation for a monetary loss or other money owed.

Tenants 1, 3, 5 and 6 applied for recovery of the filing fee.

At the reconvened hearing, the named tenants, the landlord's legal counsel, and landlord's agent (agent)/property manager attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, cross examine the others, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

An original applicant/tenant, JG, called into the hearing and asked if he could have his application be heard at the hearing.

JG was informed that his application for dispute resolution, which was originally joined with the other tenants, has been dismissed in the Interim Decision of July 10, 2020, due to his failure to attend that hearing. The tenant was informed that I would be unable to re-open his application, as it had been dismissed, without leave to reapply.

I note that the RTB records reflect that the tenant, JG, was sent a copy of the Interim Decision by email attachment on July 13, 2020.

Additionally, the lead tenant, LW, requested that all tenants who had their own email address be sent a copy of the final Decision and that she would share the Decision with any other applicants who did not have an email address.

Issue(s) to be Decided

Are the tenants entitled to a past and future reduction in monthly rent?

Are the tenants entitled to an order requiring the landlord to make necessary repairs to the rental unit?

Are tenants 1,4,5, and 6 entitled to an order requiring the landlord to comply with the Act, regulations, or tenancy agreement?

Are tenants 2 and 3 entitled to an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act?

Are tenants 2, 4 and 5 entitled to compensation for a monetary loss or other money owed?

Are tenants 1, 3, 5 and 6 entitled to recovery of the filing fee?

Background and Evidence

The rental units are in a four-floor, 22 suite building, built in 1953, according to the landlord. The current landlord is not the original landlord and the date they took ownership of the building was not provided at the hearing. The undisputed evidence is that the current landlord was not the landlord when the services were removed.

The tenants' different tenancies all started at various times. Tenant 1 began residing in the residential property in 1988 and in her present rental unit since July 1, 1990. Tenants 2 and 4 began living in their rental units in 1994, tenant 3 in 1995, tenant 5 in 2008, and tenant 6 in 2009.

The current monthly rent confirmed by each tenant is as follows:

Tenant 1, LW - $677.50
Tenant 2, CM - $581.50
Tenant 3, LD - $711.00
Tenant 4, JP -$694.50
Tenant 5, GE - $980.00
Tenant 6, KL - $1,024.00

Near the beginning of the hearing, tenant LW, the lead tenant, said some matters have now been resolved with the landlord. LW said that the fire extinguishers were updated,

the tenants have been provided with locks to the outside garbage bins and the back yard had been mowed.

LW also said the landlord has provided compensation for loss of heat for June and July 2020, and they are no longer requesting compensation for that loss.

As to the various issues, the parties provided the following evidence and submissions:

Reduction in monthly rent –

The tenants submitted that cablevision is provided in their monthly rent in each of their tenancy agreements and they received the cable service until July 2017, when the service was disconnected. The tenants asserted that the landlord has not provided cable service since that time and they are entitled to a past reduction in their monthly rent, for the loss of a service.

Each tenant testified regarding this issue, and some tenants have not had cable service and others have purchased their own cable service since it was terminated in July 2017.

The tenants claimed that the loss of cable service had a value of $112 per month. In response to my inquiry, the tenants said that they arrived at this figure due to the research of a former tenant, who has since vacated the residential property. The former tenant's research showing the value of the monthly cable service was not provided into evidence.

The tenants all submitted that they had a cable package of 189 channels when the service was terminated, and they are now entitled to have that same package of channels, or equivalent, restored.

Legal counsel's cross-examination of tenants on this issue –

LW said that she had 189 channels at the beginning of her tenancy in 1988, that she has not replaced her cable service because she cannot afford it, that she subscribes to Disney + for $6.99 per month and they have requested the landlord restore the service.

LW confirmed not filing an application regarding the loss of cable service in 2017, as they had hoped to resolve the matter with the landlord.

CM confirmed she claimed the amount of $112 due to the research of a former tenant and that she did nothing to address this issue with the landlord.

LD confirmed that the tenants all got together and that the former tenant took on this issue and collected funds to pursue the matter. LD confirmed the amount she claimed was from the information from the former tenant.

JP said he did not recall how many cable channels were provided when he moved in and has purchased his own cable service now.

GE said the number of cable channels being provided was well over 100. GE confirmed he did not pursue the claim in 2018 and 2019.

KL said that he had over 150 cable channels when he moved in and attempted to provide his own cable service now, but only used it for three months, at $25 per month.

Landlord's agent's responsive testimony –

The agent said he consulted with the cable provider and based upon their price, basic cable would cost $27 per month.

The agent testified that in August and September 2017, all the tenants were offered compensation of $27 per month, for the loss of the cablevision, and that none accepted the offer.

The agent said an entry level cable package is valued at $25 to $45 per month, and that eventually, the issue was dropped by the tenants.

The landlord's evidence included a price listing for basic cable, and three levels of other cable service, with different numbers of packages, or tiers, offered.

Request for repairs –

The primary issue is the repair to the heating system. Heat is included with the monthly rent.

The evidence showed that the boiler system quit working on or about April 9, 2020, depriving the tenants of their heat. LW said that the heating system to the building is shut down for the summer and is typically turned back on after Labour Day.

LW said that they were offered monetary compensation of $150 for April and May, each, and subsequently, the tenants were also given monetary compensation for June and July, in the same amount.

Other tenants submitted that while they understand the landlord has had the boiler system worked on, they question the timing of the work. The tenants submitted that the landlord could have had the work done much more quickly and that it should already be working.

CM first said she has seen the new boiler system, and then she said the landlord has not addressed the repair requests.

JP said he does not believe the boiler will be fixed, and confirmed he has made no direct written requests to the landlord. JP also had an issue with mice, which he requested the landlord remedy.

Upon inquiry, JP said a pest control company came two months ago, and said there are no mice in his rental unit currently.

GE questioned why the landlord could not just use the existing piping for the new boiler, and questioned the delay in the amount of time for the repairs. For instance, he said the work has been done, but the water has to be balanced. GE said the landlord has not acted fast enough to make the repairs.

KL said the landlord has not dealt with the heating issue. KL said the previous landlord had parts delivered to them from the USA within three weeks, so the landlord here is delaying the repairs. KL said the heating is the landlord's issues, not the tenants.

KL said he was not offered the monetary compensation for June and July.

The tenants also mentioned other repair or tenancy issues. LW said they want access to the mechanical room to retrieve snow shovels when the need arises and the front door does not adequately lock, which impacts their ability to use the intercom to allow their visitors to enter the building.

Landlord's agent's responsive testimony –

The agent said that he was informed of the heating failure on April 9, 2020, and attended to it immediately. The agent said the heating failure turned out to be a “pretty” substantial issue, and the landlord had several contractors attend the residential property for consultation. The agent said he was advised the boiler system could not be repaired and would require a replacement. The agent said the heating issue is ongoing, as the new boiler system has been installed, but he has been informed by the contractors that they are waiting for the final parts and final approval.

The agent said that he was informed by the contractors that delivery of parts has been impacted by COVID-19 and deliveries are now taking longer.

The agent said a further delay has been caused by a design issue, as they could not use the old venting system, according to the consultants. Therefore, the contractors had to put in a new chimney system.

The agent said they had a gas fitter, a boiler contractor, a mechanical engineer and an electrical inspector work on the new boiler system.

The agent said he was informed by the contractors working on the system that the heating is expected to be back up and running by the end of September.

As to the other issues, the agent said that the tenants are not expected to clear the snow, as the landlord hires caretakers to take care of that matter and for other property maintenance. The agent said the tenants are not entitled to enter the mechanical room.

The agent said the front door lock is repaired whenever there is an issue raised.

Request for an order for the landlord’s compliance –

Although each tenant requested a future and ongoing reduction in rent, due to the loss of cablevision, LW, JP, GE and KL also asked that the landlord be required to restore their cablevision, with the same number of channels previously given.

Request for an order requiring the landlord to provide for services –

CM requested money back for cablevision service lost, a rent reduction for lost cablevision, heat and the grass in the back yard to be cut.

LD requested access to the back yard and for the fire extinguishers to be updated.

Request for compensation for a monetary loss or other money owed-

CM requested $4,032.00 for a restoration of cable services, 189 channels, retroactive monetary compensation of $112 per month, for loss of cable service, and a future reduction in monthly rent of $112.

JP requested $3,565.80, for the cable bill since July 2017 and a rent reduction going forward in the amount of $99.05.

GE requested recovery of his filing fee of $100.00.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/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 tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In these matters, I have determined that the tenants have misstated all their actual issues. For instance, some tenants requested a restoration of the cablevision, yet also wanted a future reduction in monthly rent due to having no cablevision. In other words, they want not only a rent reduction for lack of cable service, but also for the cable service to be restored.

In other instances, the tenants placed a request for monetary compensation under their request for repairs or restoration of cablevision. In other instances, some tenants requested an order for the landlord's compliance with the Act or tenancy agreement, which was dealt with in their request for repairs and a rent reduction.

I will therefore not consider the duplicate requests of the tenants and deal with their primary requests, which centered around their request for a past monthly rent reduction since 2017, when the cablevision was discontinued by the landlord, a future reduction in their monthly rent, and their requests for repairs to the heating system.

Reduction in monthly rent –

I have determined that the most consistent request made by all tenants was a reduction their monthly rent, both retroactively from July 2017 and going forward, due to the loss of their cablevision. As such, I will not consider any individual claims for an order requiring the landlord to restore the cablevision or any other duplications, due to the conflicts and inconsistencies in their applications.

As to the loss of cablevision, section 27(2) of the Act states that a landlord may terminate or restrict a non-essential service if the landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In this case, based on the undisputed evidence, I find that the landlord was obligated to provide cablevision to each tenant under the written tenancy agreement, a service. I also find that the prior landlord terminated that service, as of July 2017.

As to the compensation claimed by each tenant, that is, a request for a past reduction in rent, in a lump sum form, I considered whether the tenants did whatever was reasonable to minimize the damage or losses. I find they did not.

I find a reasonable way to minimize a claimed loss is to take immediate steps to make the claim. In this case, the tenants first lost the cablevision service in July 2017, and they did not make their application for compensation until June 2020. This allowed their claim to build and grow. Four of the tenants had claims in excess of $4,000 and the other two tenants' claims were near or exceeded $3,500.

On this basis, I find the tenants failed to mitigate their loss as required by section 7(2) of the Act as it is unreasonable to wait almost three years to take any appropriate steps. Furthermore, that issue should have been raised with their previous landlord.

However, as their tenancy agreements do include cablevision, I will only consider their request from the date they filed their various applications, all in June 2020.

Residential Tenancy Branch (RTB) Policy Guideline 22, provides that where a tenant claims that a landlord has restricted or terminated a service or facility without reducing the rent by an appropriate amount, the burden of proof is on the tenant. Among other issues, the rent reduction must reflect the reduction in the value of the tenancy.

Here, the tenants have claimed the value of their cable package including 189 channels was $112; however, the tenants have not provided proof of the value. Further, the tenancy agreement indicates cablevision, which I interpret to mean basic cable television. I do not accept that the landlord ever meant to provide premium television package with 11 or more theme packs. I cannot accept that this service was available in 1990.

In this case, the landlord provided a screen shot from the cable provider which shows that basic, limited television, with 25+ channels, is $25 per month. I find it reasonable that the quotation of $25 does not include taxes.

I therefore find that the tenants have suffered a devaluation of their tenancy in the amount of $25 per month, which is basic cable, plus $2 for taxes, for a total of $27.00.

Therefore, I find that the tenants' rent will be reduced to the following amount commencing October 1, 2020.

Tenant 1, LW rent of $677.50 will be reduced to $650.50.
Tenant 2, CM rent of $581.50 will be reduced to $554.50
Tenant 3, LD rent of $711.00 will be reduced to $684.00
Tenant 4, JP rent of $694.50 will be reduced to $667.50
Tenant 5, GE rent of $980.00 will be reduced to $953.00
Tenant 6, KL rent of $1,024.00 will be reduced to $997.00

I also find that the tenants are entitled to a further, one time, rent reduction of $81.00, to account for the loss of cablevision from July to September, 2020.

The tenants are directed to deduct a further $81.00 from their next, or a future monthly rent payment. I direct the tenants to advise the landlord when they choose to deduct this payment so that the landlord will not serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Request for repairs-

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Where a tenant requests such repairs, I find the landlord must be afforded a reasonable amount of time to take sufficient action.

In this case, I find the evidence shows quite clearly that the landlord's agents dealt with the tenants' requests concerning the repairs mentioned above. The primary concern was the heating system, and while I accept the repair is taking longer than was expected, I find it was not unreasonable due to the age and character of the building and to add to that delay was the state of emergency that was declared on March 18, 2020, in response to the Covid-19 pandemic. I find the landlord's response to all the requests made by the tenants were dealt with within a reasonable time. Therefore, I find it not necessary to make any order for repairs.

I therefore dismiss this portion of the tenants' claim.

As to the tenants' other repair or tenancy issues, I accept that snow clearance is provided by the landlord and I find access to snow shovels have nothing to do with their rights under their tenancy agreements. I decline to require the landlord to allow the tenants access to snow shovels.

As to the matter of the front door locks, I find the tenants submitted insufficient evidence to support their request to order the landlord to make such repairs.

The tenants testified that the front door lock was not working properly and the landlord's agent said that the lock is fixed when he hears of a complaint. I find disputed oral evidence does not sufficiently meet the requestors' burden of proof on a balance of probabilities.

Request for an order for the landlord's compliance –

I have granted the tenants a rent reduction for the loss of the cablevision. As this is not an essential service, I dismiss the tenants' request to have this service restored.

Request for an order requiring the landlord to provide for services –

I dismiss this portion of the tenants' claim due to insufficient evidence and as it relates to a restoration of cablevision and repair to the heating system, which have been previously addressed in this Decision.

Request for compensation for a monetary loss or other money owed-

I dismiss the tenants' claim for a past rent reduction as I have previously found that they have failed to mitigate their loss. I find it unreasonable to simply let their claim build without taking reasonable steps to bring this matter forward.

As the tenants' applications were largely unsuccessful, I decline to award the filing fee.

Conclusion

The tenants' application for repairs, services and an order for the landlord to comply with the Act is dismissed without leave to reapply. The tenants are granted a rent reduction as shown above.

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 24, 2020

Residential Tenancy Branch