Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP, RR, FFT

Introduction

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

- a monetary order for compensation for losses or other 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 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Preliminary Matters

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to cross-examine one another.

A prospective witness, an individual purported to be knowledgeable as to mould remediation, also called into this teleconference hearing to act as a witness for the tenant. I advised this prospective witness to remain available during the time of the hearing, in case it proved necessary to obtain their input with respect to this application.

During the course of the hearing, it became apparent that the landlord was not objecting to the need to undertake adequate repairs to remove mould in the rental unit, nor were they disputing the tenant's claim that these repairs had been delayed and had proven unsuccessful to date. As the landlord was not objecting to the need for such repairs, and testimony in this regard from the prospective witness was not necessary in order to

consider the issues that I was able to address during this hearing, there was no need to include the prospective witness in this hearing, nor did the tenant or their agent request an opportunity to do by the end of this hearing.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 17, 2020, I find that the landlord was duly served with this package in accordance with section 89 of the *Act.* The tenant confirmed that they had received copies of the landlord's written evidence within the time limits established by the Residential Tenancy Branch's (the RTB's) Rules of Procedure. I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

The tenant testified that on August 20, 2020, they sent the landlord copies of the written evidence they entered into the RTB's online service portal on August 26, 2020, by Canada Post's ExpressPost, a type of mail considered registered mail for the purposes of the Act. The landlord said that they had received this material on August 25, 2020. Section 90 of the *Act* establishes that documents sent by registered mail are deemed served on the fifth day after their registered mail, in this case, the same day that the landlord said they received the mailing of almost all of the tenant's written evidence. I find that the landlord was duly served with the tenant's written evidence on August 25, 2020.

Sections 3.11 and 3.13 of the RTB's Rules of Procedure require that to the extent possible that applicants provide their written evidence along with their dispute resolution hearing package, and at least 14 days prior to a hearing, to the Respondent and to the RTB (section 3.14 of the Rules of Procedure). In this case, the tenant applied for dispute resolution on July 29, 2020, but delayed serving most of their written evidence to the landlord until it was considered served 10 days before this hearing. The only parts of their written evidence that they appear to have provided to the landlord and the RTB within the 14 day time period set out in section 3.14 of the Rules of Procedure was the documentation attached to the original application and 11 pages of evidence they provided to the RTB on August 20, 2020, and which the landlord said they received on August 19, 2020. Although the landlord said that they had reviewed some of the tenant's written evidence, they had not had a chance to check a number of documents with their own records of repairs and present evidence in response to the tenant's written evidence in advance of this hearing. For this reason, I have relied on those parts of the tenant's written evidence that the tenant and their agent cited during the course of the hearing (as per Rule of Procedure 7.4), in addition to their application for dispute resolution and the 11 page document provided to the RTB on August 20, 2020.

At the commencement of the hearing, I advised the parties that it was unlikely that I would be able to consider all portions of the tenant's application in the allotted time. Section 2.3 of the RTB's Rules of Procedure enable me to sever portions of an existing application from the remainder of an application for dispute resolution, in the event that I consider some of the issues unrelated to the matters of central importance in the application. In this case, I advised that I would endeavour to deal with as many of the issues the tenant raised in their application as possible, but would focus on the matters of primary importance, presumably the dispute regarding ongoing repairs that have not yet been completed and the tenant's request for retroactive and current rent reductions. Despite this, I was able to deal with all elements of the tenant's application during this hearing.

Issues(s) to be Decided

Should an order be issued to the landlord requiring the landlord to undertake repairs to the rental unit? Is the tenant entitled to a retroactive rent reduction as a result of the landlord's failure to provide services or facilities that they anticipated receiving as a part of this tenancy or for the loss in the value of their tenancy as a result of the landlord's failure to undertake timely and effective repairs? Should any ongoing reduction in rent be ordered with respect to new monthly payments of rent that become owing to the landlord? Should any other orders be issued with respect to this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

This tenancy for a two bedroom suite in a multi-storey strata building commenced by way of a two-year fixed term tenancy agreement on July 1, 2017. When the initial term ended, the tenancy continued on the basis of a second two-year fixed term tenancy that is to run until June 30, 2021. The parties agreed that the initial monthly rent was set at $1,635.00, payable on the first of each month. The current monthly rent that is being paid is $1,692.00. The landlord continues to hold an $800.00 security deposit for this tenancy, paid when this tenancy began. The parties agreed that the tenant is current on their rent payments, including a payment for rent for the month of September 2020.

There is undisputed evidence that a flooding incident occurred on January 28, 2020, when a pipe on the 7th floor of this building burst. Both parties agreed that water damaged the rental unit, and that the landlord had not carried any insurance to cover this damage.

The landlord maintained that attempts to repair and restore the rental unit following this flood were complicated by interactions with the strata, the company that performs such work for the strata building (the strata), and various others. Although some work was performed by the company that performs work for the strata, the tenant was not satisfied that this work was done in a timely fashion, or more importantly in an effective fashion.

The tenant discovered black mould behind a suitcase they had stored in the closet of the master bedroom for some time. Although they did not know how long this black mould had been in place, they suspected that the mould had been caused by large fans the company the landlord had retained had positioned in the rental unit to dry out the original flooding damage. The tenant maintained that these fans simply spread the mould spores caused by the flooding damage around and added to the mould problems that were already apparent in other parts of the rental unit.

While this process of restoration was continuing, a second flood occurred in the rental unit on March 4, 2020. While the landlord acknowledged that the tenant was in no way responsible for the flooding event of January 28, 2020, the parties presented different views as to whether the tenant was at least partially responsible for the flooding damage that stemmed from the March 4, 2020 incident. The tenant maintained that they were in no way responsible, as they reported the flooding and took measures to limit the new damage that was occurring as a result of this flood. The landlord maintained that the tenant did not take proper care by remaining in the rental unit to empty vessels that the tenant put in place to capture the leak and that this likely led to additional damage to the rental unit.

After each set of repairs undertaken by the company retained by the landlord, the tenant has asked for testing for mould to be conducted. In their written evidence, the tenant noted that this has led to the company retained by the landlord having to cut holes in the drywall on three separate occasions to test for mould. Each time, these tests revealed that there continues to be a mould problem in the rental unit, which has yet to be resolved. The tenant is very concerned that they have been unable to use all of their rental unit once the mould was discovered, and is worried that the mould problems may be presenting a health hazard. Neither the tenant nor their agent provided any sworn

testimony nor referred me to any reports from health care professionals as to any deterioration in the tenant's health arising out of mould problems or a lack of effective repairs conducted by the landlord to the rental unit.

The landlord maintained that they have earnestly attempted to have the rental unit restored following the flooding incidents. In their written evidence, the landlord provided the following statement describing some of the delays that have been encountered in trying to have repairs undertaken:

... As we began making the necessary arrangements for emergency repairs from the flood as well as additional repairs, the process has been consistently delayed because we have been respectful and accommodating to (the tenant's) schedule and her feelings of her health, privacy, and safety...

(as in original but for anonymization of tenant's name)

They testified that as recently as the day before this hearing, they had received another email from the company they had retained to repair this problem, but had not had a chance to review that email. The landlord fully acknowledged that the mould problem has not yet been resolved to either their satisfaction or the satisfaction of the tenant, and that they intend to ensure that this work is successfully completed as soon as possible, hopefully by October 1, 2020. On this point, the tenant pledged that they would be as co-operative as possible during the current COVID-19 pandemic to ensure that adequate and effective repairs can be scheduled and completed.

In their written evidence, the landlord also noted that since the mould in the closet was behind a suitcase placed there by the tenant that the tenant may be partially responsible for this problem as they had not provided space behind the suitcase to enable proper air flow and ventilation there. The landlord also submitted extensive written evidence to support their assertion that the tenant has not been fully co-operative in enabling the landlord's repair workers to access the rental unit so as to complete their work. On some of these occasions, the tenant raised concerns about the precautions being taken by the workers to safeguard the tenant and their rental unit during the ongoing COVID-19 global pandemic. On other occasions, the landlord maintained that the tenant had not fully advised them as to the availability of the rental unit for work, as the tenant had gone on vacation without alerting the landlord that work could not be undertaken during that period.

Near the beginning of this hearing, I asked the tenant and their agent to direct my attention to any Monetary Order Worksheet they may have entered into written evidence, as I had been unable to find one. They confirmed that they had not provided one. They also testified that they had not provided any breakdown of how they arrived at the $13,730.00 figure they had identified in their application for the requested monetary award for losses in their application. When questioned on this aspect of their application, the tenant's agent said that the $13,730.00 cited in their application for a monetary award resulted from the tenant's assertion that they should not have had to pay any rent at all from February 2020 until August 2020.

At the end of what would appear to have been an August 19, 2020 email sent to the landlord, and included in the 11-page document the tenant entered into written evidence that I can consider, the tenant provided the following statement:

...Mold and flood are accidents, and no one could win from the accidents. Hope you would feel better when you think that the price of your property rose from $500.000 in 2015 to $700,000, now but your tenant has been experiencing a hard time with you but could not share a dollar from the profit.

My daughter is supposed to come back at the end of September. We need you to fix the unit properly ASAP.

Analysis

In considering this matter and as noted earlier, this is a continuing tenancy and there remain repairs that both parties agree have not yet been completed. Since both parties are most interested in ensuring that these repairs are completed adequately and as soon as possible, my priority is to ensure that measures are in place to make this happen.

In this regard, section 32 of the *Act* reads in part as follows:

> ***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.*

> *(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
>
> *(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

While there is some evidence before me that the tenant may be partially responsible for some of the damage that needs to be repaired, I find on a balance of probabilities that it is more likely than not that the original flooding incident and the unsuccessful measures taken to restore the rental unit shortly after that occurred are responsible for the repairs that still need to be undertaken. The landlord has continuously attempted to repair the rental unit and correct the mould problems, and has made no assertion either in their written evidence or their sworn testimony that these repairs are the responsibility of the tenant.

Sections 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 or future rent if I determine that there has been "a reduction in the value of a tenancy agreement."

During the hearing, the landlord gave sworn testimony that they fully intend to have adequate repairs completed as soon as possible and hopefully by October 1, 2020, the next scheduled date for receiving rent from the tenant. The tenant testified that they are willing to co-operate to allow this work to be done, provided that they receive 24 hours notice by email in English as to prospective repairs that are to be undertaken.

As such and to ensure that these repairs, which I find have been taking an inordinately long time to complete, are finished as soon as possible, I issue the following orders in accordance with sections 32, 65(1)(c) and (f) of the *Act:*

1. I order the landlord to complete adequate and effective repairs to the mould problems in the rental unit to a level recognized as healthy and acceptable to those working in that industry by October 1, 2020. I order that this work is to be performed by those licensed and/or certified to undertake such work **or** by a company or person that both the landlord and the tenant agree upon.
2. I order the landlord to send the tenant an email in the English language giving the tenant at least 24 hours notice of repairs to be undertaken to this rental unit.

Upon receipt of such an email from the landlord, I order the tenant to make their rental unit available for the repairs to their rental unit.

3. I order that upon the satisfactory completion of the repair work identified above that the landlord obtain a written final report from those performing such work. This report is to include records of testing for mould in the rental unit.
4. I order that within 7 days of receiving the written report identified above, that the landlord provide the tenant with a copy of that report.
5. In the event that the repair work cited in Order #1 is not adequately completed by October 1, 2020, or the tenant has not been provided with a copy of the final written report cited in Order #4 by October 1, 2020, I order that the monthly rent for this tenancy be reduced by 25%. The effect of this order would reduce the monthly rent from $1,692.00 to $1,269.00 for the month of October 2020. Monthly rent would return to $1,692.00 on November 1, 2020, if all of the provisions of Order #1 and 4 have been completed before November 1, 2020.
6. In the event that the repair work cited in Order #1 is not adequately completed by November 1, 2020, or the tenant has not been provided with a copy of the final written report cited in Order #4 by November 1, 2020, I order that the monthly rent for this tenancy be reduced by a total of 35%. The effect of this order would reduce the monthly rent from $1,692.00 to $1,099.80 for the month of November 2020. Monthly rent would return to $1,692.00 on December 1, 2020, if all of the provisions of Order #1 and 4 have been completed before December 1, 2020.
7. I order that further reductions in monthly rent by an additional 10% be allowed on each succeeding month in which the provisions of Order #1 and 4 have not been complied with commencing on January 1, 2021. This process of reducing each month's rent by 10% of the original $1,692.00 is to continue until either the provisions of Order #1 and 4 are met or no monthly rent becomes owing. In each scenario and as outlined in Orders #5 and 6, monthly rent will return to the original monthly rent that is legally charged (i.e., at this time $1692.00) in the month following the provisions of Orders #1 and 4 being met.

While the above orders address much of the tenant's application, these orders do not take into account the tenant's application for a monetary award for losses they have already suffered and the loss in the value of their tenancy thus far. I address this portion of the tenant's application as follows.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find that the tenant and their agent have provided very little detail in their written evidence and their sworn testimony to quantify their application for a monetary award of $13,730.00. I find that the only written evidence they have presented to support the amount of loss the tenant is seeking appears to be their claim at the end of their August 20, 2020 email to the landlord that the landlord should for some reason share in the $200,000.00 profit the tenant estimated the landlord has made on the ownership of this rental unit from 2015 to the present. I find this a somewhat amazing request, given that the tenant confirmed that they hold no ownership interest in the rental unit whatsoever.

In the absence of a Monetary Order Worksheet that applicants for monetary awards are asked to complete to support their requests for monetary awards, the tenant's agent testified that the $13,730.00 figure identified in the tenant's claim represented their belief that they should not have had to pay any rent for the period from February until August 2020. Even if I were to accept that the tenant should not be held responsible for paying any rent over this time period when they continued living in the rental unit throughout almost all of this time and kept their belongings in the rental unit, the amount claimed still exceeds the rent they paid between February and August 2020. As the tenant applied for dispute resolution on July 29, 2020, they had only made rent payments at that time for six months, totalling $10,152.00. Even if rent for August 2020 were added to this amount, the total would still only have been $11,844.00, almost $2,000.00 less than the tenant has claimed in their application for a monetary award of $13,730.00.

By contrast to the very limited and imprecise evidence presented in support of the tenant's claim, the landlord said that they recognized that there had been disruption to the tenant arising out of the flooding incidents and that there had been a loss in value of the tenancy since the flood occurred. The landlord testified that they were still willing to honour their previous commitment to provide the tenant with the equivalent of two month's rent to compensate them for the troubles they have encountered with respect to this matter and the delays in getting effective repairs completed.

Based on the above testimony, I find that the landlord's willingness to accept responsibility for compensating the tenant a total of two month's rent is eminently

reasonable and fair, and adequately compensates the tenant for any loss in the value of their tenancy that they may have encountered thus far in this tenancy. I find that the tenant has certainly not established any claim for receiving any monetary award in excess of this amount.

As mentioned at the hearing and as authorized pursuant to sections 65(1)(c) and (f), and 67 of the *Act,* I find that the tenant is entitled to a monetary award of $3,384.00 for losses arising out of this tenancy. This amount represents two months of rent for this tenancy ($1,692.00 x 2 = $3,384.00).

As the tenant has been for the most part successful in this application, I allow them to recover their $100.00 filing fee from the landlord.

Conclusion

I issue the following orders:

1. I order the landlord to complete adequate and effective repairs to the mould problems in the rental unit to a level recognized as healthy and acceptable to those working in that industry by October 1, 2020. I order that this work is to be performed by those licensed and/or certified to undertake such work **or** by a company or person that both the landlord and the tenant agree upon.
2. I order the landlord to send the tenant an email in the English language giving the tenant at least 24 hours notice of repairs to be undertaken to this rental unit. Upon receipt of such an email from the landlord, I order the tenant to make their rental unit available for the repairs to their rental unit.
3. I order that upon the satisfactory completion of the repair work identified above that the landlord obtain a written final report from those performing such work. This report is to include records of testing for mould in the rental unit.
4. I order that within 7 days of receiving the written report identified above, that the landlord provide the tenant with a copy of that report.
5. In the event that the repair work cited in Order #1 is not adequately completed by October 1, 2020, or the tenant has not been provided with a copy of the final written report cited in Order #4 by October 1, 2020, I order that the monthly rent for this tenancy be reduced by 25%. The effect of this order would reduce the monthly rent from $1,692.00 to $1,269.00 for the month of October 2020. Monthly rent would return to $1,692.00 on November 1, 2020, if all of the provisions of Order #1 and 4 have been completed before November 1, 2020.

6. In the event that the repair work cited in Order #1 is not adequately completed by November 1, 2020, or the tenant has not been provided with a copy of the final written report cited in Order #4 by November 1, 2020, I order that the monthly rent for this tenancy be reduced by a total of 35%. The effect of this order would reduce the monthly rent from $1,692.00 to $1,099.80 for the month of November 2020. Monthly rent would return to $1,692.00 on December 1, 2020, if all of the provisions of Order #1 and 4 have been completed before December 1, 2020.
7. I order that further reductions in monthly rent by an additional 10% be allowed on each succeeding month in which the provisions of Order #1 and 4 have not been complied with commencing on January 1, 2021. This process of reducing each month's rent by 10% of the original $1,692.00 is to continue until either the provisions of Order #1 and 4 are met or no monthly rent becomes owing. In each scenario and as outlined in Orders #5 and 6, monthly rent will return to the original monthly rent that is legally charged (i.e., at this time $1692.00) in the month following the provisions of Orders #1 and 4 being met.

I issue a monetary Order in the tenant's favour in the amount of $3,484.00, under the following terms which allows the tenant a monetary award for losses arising out of this tenancy and recovery of their filing fee from the landlord. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: September 05, 2020

Residential Tenancy Branch