Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF

Introduction

On September 22, 2020 the tenant filed an Application for Dispute Resolution in this matter. They applied for two orders: that the landlord comply with the legislation and/or the tenancy agreement; and that the landlord provide services/facilities required by the tenancy agreement or law.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on November 20, 2020. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present their oral testimony during the hearing.

Both parties confirmed their receipt of the documentary evidence prepared in advance by the other. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the tenant entitled to an order compelling the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62 of the *Act*?

Is the tenant entitled to an order that the landlord provide services/facilities required by the agreement or the law, pursuant to section 62 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement for this hearing. The tenancy started on November 1, 2016 for an initial fixed-term that ended on October 31, 2017. After that, the

tenancy continued on a month-to-month basis. The rent as at the time of hearing was $1,845 per month. The agreement provides that “Building amenities” are included in the rent.

The tenant presented that they have been locked out of the amenities several times. The amenities here include “two change rooms, a sauna, hot tub, lap pool and gymnasium.” Previously in 2017 the shower area was shut down for 10 months, for repairs. In 2020, the area has been closed since approximately April because of public health concerns.

To explain the situation, the tenant provided a two-page document, undated. This outlines:

- the daily use of amenities was what attracted the tenant to the building initially in 2014;
- the tenant was accused of “water damage” in both men’s and women’s change areas;
- strata turned off the water for repairs in 2017 – this was for ten months and put one of the tenants in a difficult situation having to use bathtub/shower in their own unit for daily cleaning;
- the amenities have been closed in 2020 due to public health restrictions in pandemic times; however “Since May of 2020 the city has lifted all lockdown mandates pertaining to condo-amenities.”
- the tenant asked for an exception in this case for the elderly tenant to use the “walk-in showers in the . . . change room”
- the tenant learned that strata members are using the amenities
- underlying this is the strata council’s accusations against the tenant that they caused water damage – this falls under a claim of more general harassment
- they seek $250 per month “for the ten months the showers were shut down in 2017, and compensation from May 2020 onwards.”

In the hearing, the tenant presented their claim as outlined above. They submitted that they raised this issue with the landlord who responded that the tenant was not allowed to go in there. The tenant raised their objections to the “false accusations” of the strata. They also questioned the real need for rules and posters providing for public health concerns regarding the area shut-down. They stated this was not mandated by the city; rather, it’s strata and there are many other stratas that allow for this.

The landlord presented that they were responsible for the tenant’s past strata bylaw breaches and paid fines that were levied for the complaints. They provided 4 letters that show this in their evidence. This “misuse” centres on the common use of the amenities area, where the tenant left the shower on resulting in condensation that contributed to water damage.

The landlord underlined that the amenities area is not for daily use and regular showers; the unit is specifically furnished for this. Even the strata bylaws account for this. Moreover, the strata is the body that sets the decisions on usage and access and this is "legitimate" with respect to bylaws and legal restrictions. With a worldwide pandemic in 2020, the strata had taken the measure in line with public health guidelines to close the area to building residents. The landlord maintains that when the area is closed, it is not available to anyone.

In their evidence, the landlord provided a copy of the Strata Bylaws and highlighted the relevant passage. It reads: "The Strata Corporation may, without notice, close the recreation facilities for repairs, maintenance, inspections, and health and safety reasons." Further, the bylaws provide that: "Showers are permitted only in conjunction with the use of Recreation Facilities."

Analysis

I find the landlord has an obligation to the strata corporation that governs use of the recreation facilities. The landlord is not in a position to circumvent this governing structure within the building on the tenant's behalf. I find the landlord's obligations outweigh those they owe to the tenant under the tenancy agreement for use of these particular amenities. In short, the landlord provides amenities to the tenant *when available*; however, access to all is determined by the strata. The strata is the ruling body. The landlord is not party to its' decision-making and rule-setting function.

More importantly, the tenant and landlord are subject to the strata's compliance with public health guidelines.

The Province enacted the *COVID-19 (Residential Tenancy and Manufactured Home Park Tenancy Act) (No.3) Regulation* (267/2020). This regulation in section 9 specifies that a tenant's right of access is restricted:

(1) If a landlord has terminated or restricted access to common areas of a residential property and one or more of the circumstances set out in subsection (2) applies, the director must not grant an order that reduces the rent or any other order for monetary compensation resulting from the termination or restriction of access.

(2) For the purposes of subsection (1), the circumstances are as follows:

(a) 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;

(b) 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*;

(c) to follow the guidelines of the British Columbia Centre for Disease Control or the Public Health Agency of Canada.

. . .

(4) Subsections (1) and (3) of this section are exceptions to sections *27 [terminating or restricting services or facilities]*, 28 *[protection of tenant's right to quiet enjoyment]*, 30 *[tenant's right of access protected]*, 62 (3) *[director's authority respecting dispute resolution proceedings]*, 65 (1) *[director's orders: breach of Act, regulations or tenancy agreement]* and 67 *[director's orders: compensation for damage or loss]* of the *Residential Tenancy Act*.

By this regulation, the tenant is not eligible for compensation or rent reduction for their claim. Even without the above regulation in place, I find the tenant has not established that the landlord has wilfully restricted their access to the amenities area or otherwise not relayed their concerns to the strata.

As a result, I dismiss the tenant's application with no order set in place. The tenant does not have leave to re-apply on this issue. They are not eligible for such an order in these circumstances. The tenant did not provide particulars on their claim for monetary compensation; as a result, there is no order for this facet of their claim.

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: November 30, 2020

Residential Tenancy Branch