Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ra-An Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

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

- Compensation for damage to the rental unit caused by the Tenant, their pets, or their guests;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, the Landlord's family member, the Tenant, and the Tenant's witness (the Witness), all of whom provided affirmed testimony. The Tenant acknowledged receipt of the Application and Notice of Hearing by registered mail within the timelines set out in the Act and the Rules of Procedure. The parties also acknowledged receipt of each other's documentary evidence within the required timelines and neither party raised concerns regarding service or the acceptance of the documentary evidence. As a result, the hearing proceeded as scheduled and the documentary evidence before me from both parties was accepted 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 Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenant, copies of the decision will be sent to them by email at the email address listed in the Application. At the request of the Landlord, copies of the decision and any orders issued in their favor will be mailed to them at the mailing address listed in the Application.

Preliminary Matters

At the outset of the hearing the Landlord requested an adjournment to allow them to serve and submit additional documentary evidence. Rule 7.8 of the Rules of Procedure states that at any point in time after the start of the hearing, a party or a party's agent may request that a hearing be adjourned and that the arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

Rule 7.9 sets out criteria to be considered in assessing whether an adjournment is appropriate, as follows:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

The Tenant disagreed that the Landlord should be granted an adjournment. As a result, I inquired with the Landlord about what documents they wished to submit and why they had not obtained and served them within the timelines set out in the Act and the Rules of Procedure. The Landlord stated that they cannot locate several invoices and are still waiting for others in relation to repairs completed to the rental unit on August 25, 2020.

Residential Tenancy Branch (Branch) records indicate that the Landlord filed their Application seeking compensation for the repairs related to the invoices they are seeking an adjournment to obtain and submit, on July 23, 2020. Rule 2.5 of the Rules of Procedure states that to the extent possible, the Applicant should submit copies of all documentary and digital evidence to be relied on in the proceeding. Further to this, rule 3.14 of the Rules of Procedure states that all evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

As the Application was filed on July 23, 2020, and the hearing was set for November 13, 2020, I find that the Landlord had more than sufficient time to gather and submit documentary evidence in relation to their own Application. I also find that the documentation that the Landlord wishes to seek an adjournment to locate and/or obtain, relates to repairs completed on August 25, 2020. As a result, I also find that the

Landlord has already had sufficient time to obtain this evidence in compliance with the above noted timelines. As this evidence either existed or could reasonably have been obtained by the Landlord through the exercise of reasonable due diligence prior to the date of the hearing and well in advance of the evidence submission deadlines set out in rule 3.14 of the Rules of Procedure, I therefore do not find that this evidence qualifies as new and relevant evidence under rule 3.17 of the Rules of Procedure.

I find that it is incumbent upon Applicants to have as much evidence as possible in support of their claims at the time that they file their Application, and that evidence not available at the time of the Application must be served on the other party and submitted to the Branch at least 14 days before the hearing. I find that the Landlord's need for an adjournment stems primarily from their failure to Act diligently in locating or obtaining evidence in support of their claims, despite having more than sufficient time to have done so, and the filing of their Application prematurely before the full cost of work was known, or both. Further to this, I find that there is significant prejudice to the Tenant in adjourning, as they have appeared at the hearing ready to proceed and an adjournment will likely result in a lengthy delay to the proceedings. Finally, I also do not find that an adjournment is required to provide the Landlord with a fair opportunity to be heard, as they appeared at the hearing and have the opportunity to present oral testimony for my consideration, or that an adjournment will result in resolution.

Based on the above, the Landlord's request for an adjournment was denied and the hearing therefore proceeded as scheduled.

Issue(s) to be Decided

Is the Landlord entitled to $20,000.00 in compensation for damage to the rental unit caused by the Tenant, their pets, or their guests?

Is the Landlord entitled to $10,000.00 in compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the $100.00 filing fee?

Background and Evidence

On July 6, 2020, the parties came before me at 11:00 A.M. regarding the Tenant's claim for:

- Repairs;

- An order for the Landlord to comply with the Act, regulation or tenancy agreement;
- An order for the Landlord to provide services or facilities;
- An order for the Landlord to allow access to the rental unit for the Tenant and their guests;
- An order restricting or setting conditions on the Landlord's right to enter the rental unit;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; • Compensation for monetary loss of other money owed; and
- Recovery of the filing fee.

The majority of the Tenant's claims were severed pursuant to rule 2.3 of the Rules of Procedure and the hearing proceeded based solely on the Tenant's claims for repairs to the rental unit by the Landlord and recovery of the filing fee.

During the hearing the parties chose to settle the matter pursuant to section 63 of the Act. As part of the settlement agreement the Landlord agreed to complete the following assessments and repairs to the rental unit no later than August 32, 2020:

- replace the carpet throughout the rental unit with flooring of their choice, provided the flooring is of greater or equal quality to the initial carpeting and suitable for residential indoor use;
- paint the interior walls of the rental unit;
- have the flooring and cabinetry in the bathroom assessed and repaired or replaced as necessary due to moisture, damage or wear and tear;
- fix or replace the faucets in the bathroom and kitchen;
- have the cabinetry in the kitchen assessed and repaired or replaced as necessary due to moisture, damage or wear and tear; and
- have the rental unit assessed for any ongoing leaks and to complete any necessary leak repairs or remediation in a timely manner.

The Landlord agreed to have these repairs completed by a qualified professional in good standing in the community, except for paining and repair/replacement of faucets, and to reimburse the Tenant the $100.00 spent for the Application filing fee by way of authority to deduct this amount from the next months rent.

In their Application the Landlord appears to now be seeking reimbursement of the costs incurred by them to complete the repairs they agreed to complete in the settlement agreement reached between the parties on July 6, 2020. During the hearing the Landlord stated that they are now seeking $20,000.00 in costs for these repairs, which

does not even represent the full costs incurred, as the actual costs were greater than those in the quote they obtained, because when they entered the rental unit, it was apparent that the repairs were required as a result of the Tenant's failure to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit as required by section 32(2) of the Act.

The Tenant denied this, stating that the rental unit has deteriorated due to the Landlord's failure to inspect the rental unit over the course of their 14 year tenancy, or to complete routine maintenance or repairs during that time as required. As a result, the Tenant argued that the reason the repairs are necessary are because the Landlord has failed to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant as required by section 32(1) of the Act. As a result, the Tenant denied that they are responsible for any of the repair costs sought by the Landlord.

The parties also disputed the state of the rental unit at the start of the tenancy, with the Landlord and their family member stating that it was recently renovated prior to the start of the tenancy in 2006, and the Tenant and their Witness, who moved into a different room in the rental unit under a separate tenancy agreement with the Landlord in 2005, stating that it was already in worn condition at the start of the tenancy. Despite the above, the parties were in agreement that the bathroom floors, sink, toilet, and walls were redone, and the kitchen sink a faucet replaced, in 2011.

The Landlord also sought $10,000.00 in compensation for monetary loss or other money owed. During the hearing the Landlord explained that they are seeking this amount as the Tenant's neglect of the rental unit has necessitated extensive repairs. They stated that it was difficult for them to find a contractor willing to complete the repairs due to the unhygienic state of the rental unit, which represents a health hazard to them and other occupants. The Landlord also stated that they have asthma and could have become ill or required medication from the unhygienic state of the rental unit and that the Tenant's failure to maintain reasonable health and cleanliness standards impacted or had the potential to impact other occupants of the rental unit. Finally, the Landlord referred to an incident wherein the Tenant videotaped an interaction between them in the rental unit and stated that a window is broke, window screens are missing, and that the Witness was provided with blinds and paint but never installed the blinds or painted the rental unit.

The Tenant denied failing to maintain reasonable health and cleanliness standards and reiterated their position that it was the Landlord's failure to repair and maintain the rental unit as required by section 32(1) of the Act over the course of their 14 year tenancy that has resulted in the need for renovations and repairs, not their own cleaning standards. They also questioned why the Landlord is referring to paint and blinds given to the Witness, as the Witness is a tenant of the Landlord under a separate tenancy agreement and is not named as a respondent in the Application. The Tenant also stated that the Landlord's claim is actually in retaliation to another ongoing dispute between them which is before the Branch for consideration and a previous order by the Branch that they are owed compensation by the Landlord. As a result, the Tenant disagreed that the Landlord is entitled to the $10,000.00 sought.

The Landlord also sought recovery of the $100.00 filing fee and both parties submitted documentary evidence in support of their claims.

Analysis

During the hearing on July 6, 2020, there was agreement between the parties that repairs to the rental unit were required by the Landlord, due to ongoing moisture issues/leaks, and a general lack of upkeep and repair to the rental unit by the Landlord. In the settlement agreement reached between the parties on July 6, 2020, the Landlord therefore agreed to complete the assessments and repairs that they are now seeking reimbursement for, in order to settle the Tenant's Application seeking an order that the Landlord complete repairs to the rental unit.

As the Landlord agreed as part of the settlement agreement to complete these repairs, I find that they are not now entitled to the reimbursement of any costs incurred to complete them, regardless of whether they now feel that the repairs are required either in full or in part, as a result of the Tenant's failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit as required by section 32(2) of the Act. In my opinion, a finding that the Landlord is entitled to such costs would be absurd and illogical and would effectively render the settlement agreement reached between the parties on July 6, 2020, of no force or effect. If the Landlord was not willing to complete these repairs at their own cost, or believed that they were required as a result of the Tenant's failure to comply with section 32(2) of the Act, then they should not have agreed to complete them as part of the settlement agreement.

In support of their position and testimony that the rental unit required the above noted repairs due to the Tenant's failure to maintain reasonable health and cleanliness

standards in the rental unit, the Landlord submitted only a written statement, 11 photographs, and quotes for repairs. No proof of the condition of the rental unit at the start of the tenancy was provided, and with the exception of renovations to the bathroom and the installation of a new kitchen sink and faucet in 2011, the parties disputed the state of the rental unit at the start of the tenancy, with the Landlord arguing that it was recently renovated prior to the start of the tenancy in 2006, and the Tenant and Witness stating that it was not, and was in fact, in worn condition at that time.

The photographs submitted by the Landlord largely show, in my opinion, clutter and untidiness, as well as damage that I have already established above was the responsibility of the Landlord to repair at their own cost in accordance with their settlement agreement. Further to this, I find the quote for contractor services submitted by the Landlord vague, with a only a general overview of the types of things to be completed, such as painting, plumbing, electrical, material and supplies, waste removal, and miscellaneous, instead of a breakdown of actual work to be done in each area of the rental unit and at what cost, which I find exceptionally unhelpful in determining exactly what was or will be replaced as part of the quote, why, and at what cost.

As a result of the above, I dismiss the Landlord's claim for reimbursement of $20,000.00 in costs incurred to complete the above noted assessments and repairs, without leave to reapply.

Although the Landlord alleged in their Application that the Tenant stole furniture, appliances, and blinds, no testimony was provided by the Landlord in the hearing on these issues. Although the Landlord and their family member mentioned that the Witness, who resides in a separate room in the rental unit under a separate tenancy agreement with the Landlord and shares common space with the Tenant, was provided items, such as paint and blinds but neither painted nor installed the blinds, I do not find this testimony relevant to the matter at hand as the Witness is a tenant of the Landlord under a separate tenancy agreement and is not named as a respondent in this Application.

While the Landlord stated that a window in the rental unit was broken, and that the Tenant had taken window screens, which they wished to be returned, no documentary evidence was submitted by the Landlord in support of this testimony and the Tenant denied damaging the rental unit or stealing window screens. In any event, as the rental unit contains shared common areas, I find that it is also possible that the areas allegedly damaged or the items allegedly stolen by the Tenant according to the Landlord, could have been damaged or stolen by other tenants of the Landlord also residing in the

rental unit or their guests. As a result, I also dismiss the Landlord's above noted claims without leave to reapply.

Finally, the Landlord sought $10,000.00 in compensation for monetary loss or other money owed. However; the basis for this claimed amount appeared to me to be, at least in large part, the exact same basis for the $20,000.00 claim that I have already dismissed as part of this Application, specifically that the Tenant has not complied with section 32(2) of the Act. The Landlord also stated that they have asthma and could have become ill or required medication from the unhygienic state of the rental unit and that the Tenant's failure to maintain reasonable health and cleanliness standards impacted or had the potential to impact other occupants of the rental unit. However, I find that the Landlord cannot double dip or improve their odds for success by claiming for the same thing twice and as I have already dismissed the Landlord's claim for reimbursement of costs associated with completing the repairs in the rental unit without leave to reapply, I also dismiss any portion of this claim also relating to repairs covered by the settlement agreement.

Further to this, I find that in order to be entitled to compensation pursuant to section 7 of the Act and Policy Guideline 16, a party must actually have suffered a loss. While I accept from the photographs submitted by the Landlord that the Tenant was in breach of section 32(2) of the Act given the state of the rental unit, I am not satisfied that an actual loss was suffered by the Landlord as a result and I decline to award compensation for hypothetical loss that could have occurred but did not, such as illness of the Landlord, or losses potentially suffered by parties other than the Landlord.

In the Application the Landlord stated that they are also seeking compensation for harassment and stress, but no testimony was provided in the hearing regarding harassment by the Tenant, other than an incident during the completion of repairs wherein the Tenant was video taping the interaction. A video of the interaction was submitted by the Tenant for my review and I not only disagree that the Tenant was harassing the Landlord, but it is clear from the video that the Landlord struck the Tenant, forcing them to drop their phone to the floor.

As a result of the above, I am not satisfied by the Landlord that they are entitled to the $10,000.00 claimed for monetary loss or other money owed and I therefore dismiss this claim without leave to reapply.

Overall, I find that the Landlord's claim amounts primarily to an attempt to recoup costs for repairs they already agreed to complete themselves as part of the settlement

agreement reached on July 6, 2020, which is, in my opinion, both unreasonable and an abuse of the Residential Tenancy Branch dispute resolution process.

As the Landlord was unsuccessful in their Application, I therefore decline to grant them recovery of the $100.00 filing fee.

Conclusion

The Landlord's Application is therefore dismissed in its entirety, 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 13, 2020

Residential Tenancy Branch