Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: ERP, MNDCT, OLC, RP, RR

Introduction

The tenants seek various relief under sections 32, 33, 62, 63, 65, and 67 of the *Residential Tenancy Act* (the "Act").

The tenants' joined applications were heard at a previous hearing. On December 18, 2019, the Supreme Court of British Columbia, upon judicial review, ordered the original decision be set aside and that a new hearing be held.

The *de novo* hearing was first held on September 10, 2020, adjourned to October 27, 2020 (for the purposes of allowing a related Supreme Court matter to resolve), and then adjourned for a final time to January 19, 2021. I heard testimony and submissions from the parties, and a few witnesses, at the hearings on October 27 and January 19.

At the hearing on January 19, 2021, in attendance were the lead tenant, an agent for the landlords, and another individual who appeared to assist the agent.

Preliminary Issue: Severing and Dismissal of Non-Urgent Matters

At the start of the hearing, the tenant advised that, in consultation with the other tenants, the only issues that they sought resolution on were those having to do with the urgent matters concerning the security and safety issues (relating to unsanitary issues), the loss of facilities, and the underground parking. Those matters are, I find, related to the applications made seeking an order that the landlords comply with the Act, the regulations, or the tenancy agreements, pursuant to section 62 of the Act. Similarly, they relate to the applications for an order that the landlords provide services or facilities as required by the tenancy agreements, the Act, or the regulations, pursuant to section 62 of the Act. These matters, insofar as the "repair" to the "filthy garbage disposal area," also relate to an order under sections 32 and 62 of the Act.

All other claims, namely, those made to reduce rent, a claim for compensation (including one made for aggravated damages), and a claim for an order for emergency repairs, are hereby dismissed *with* leave to reapply. The tenant acknowledged that this is how these claims would be dealt with, and he understood that he and the other tenants remain at liberty to reapply for those matters.

Issues

The issues that must therefore be determined are whether the tenants are entitled to

1. an order for regular repairs under sections 32 and 62 of the Act;
2. an order that the landlords provide services or facilities as required by the tenancy agreements or the Act, pursuant to section 62 of the Act;
3. an order that the landlords comply with the Act, the regulations, or the tenancy agreements, pursuant to section 62 of the Act.

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

Parking and garbage are the two central issues in this dispute. The tenants (referred to as "tenant" herein, as the lead tenant provided most of the testimony and submissions) argued that they were originally provided parking. However, the landlords took away that parking when they built a new residential tower about a block over. In addition, the tenants were originally given access to three visitor spots. The landlord requisitioned those visitor parking spots to use for the garbage bins.

The garbage bin area was described by the tenant and his witness (V.M.) as "filthy." Submitted into evidence were 122 photographs depicting a particularly messy and filthy garbage bin. The multiple garbage bins were, quite literally, overflowing. The witness testified that she "stepped on a needle" at one point. There are drug addicts in the area, and few security measures. In addition there are many birds and vermin that make their way into the garbage area.

In cross examination by the landlords' agent, the witness testified that the garbage area is "absolutely clean" on weekdays but "filthy" on the weekends. The landlords' agent ("agent") testified that the garbage bin area now has a chain-link fence surrounding it, there is a locked gate (with a deadbolt), and now there is barbed wire running around top of the fence. The barbed wire cost the landlords $1,600. She added that the garbage bins are cleaned and emptied six days a week.

Unfortunately, she added, they rely on their tenants to help keep the gate locked, but "despite our efforts" the gate is kept being left open. Submitted into evidence by the landlord were a series of more recent photographs which depict the caged garbage area relatively tidy and clean.

The tenant argued that parking was included as part of the tenants' tenancy agreements. While he recognized that the parking was not "specifically" in the tenancy agreements, that it was an implied agreement.

Conversely, the landlord's agent argued that at no time was parking included in either the rent or was it part of the tenants' tenancy agreements. Submitted into evidence by the landlords were the tenants' copies of the landlord's "PARKING AGREEMENT" that each tenant signed. The two-page agreement included a term, near the top of the document and below the parties' names that states the following:

> It is acknowledged between the parties, that this agreement is separate and distinct from any other agreement which the Licensee [the tenant] may have with the Licensor [the landlord].

The agreement included other standard terms including the fees, deposits, rate adjustments, and so forth. There is no reference to the licensee's tenancy agreement.

A copy of the tenants' tenancy agreements were also submitted into evidence by the landlord. In clause 3 of the tenancy agreement there is a reference to parking: "Parking; See Clause 6, Rent". Under clause 6, which is titled "RENT AND FEES," there are separate and distinct lines which are titled "Rent," "Parking Fee(s)," "Other Fee(s)", and then "TOTAL RENT AND FEES."

Under clause 3, several "Appliances" are listed, and those that are included in the rent are checked off. Several checked "appliances" include cablevision, window coverings, heat, and several others, including "Garbage Collection*".

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Parking Issue

The tenant argued and submitted that parking is an implied term of the tenancy agreement. The landlord argued and submitted that parking is distinct and separate from the tenants' tenancy agreements. The difference between the parties' respective interpretations of the parking issue will affect whether the landlord is required to provide parking (as is being sought by the tenants) or whether the landlord has discretion to provide parking based on availability and its own discretion.

"Tenancy agreement" is defined in section 1 of the Act to mean "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit."

In this dispute, while the tenancy agreements refer to parking, there is (1) a separate line for parking, distinct from the dollar amount listed on the "rent" line, and (2) a

separate parking agreement, a two-page document that makes it clear that the parking agreement is separate from any other agreement between the parties. Payment for parking is separate from the rent payment. This is sensible arrangement, given that many people who live and work in high-density urban areas do not require parking.

Given that the right of a tenant (or anyone else for that matter) to parking is an arrangement made with the landlord separate and apart from the tenancy agreement, I find that it is not an implied term of the tenancy agreement. Parking is not a service that forms part of the tenancy agreement.

As such, I make no order under the Act that the landlords provide, reinstate, or otherwise make available parking to the tenants except in accordance with any agreement made through the landlords' parking agreement, which is separate and distinct from the tenancy agreement.
Furthermore, there is no evidence to support the tenants' argument that they are entitled to visitor parking. Nowhere in the tenancy agreements is it stated that the tenants are entitled to visitor parking.

2. Garbage Issue

The photographs submitted by the tenants of the garbage area in June 2020 and mid-October 2020 depict an incredibly filthy garbage area. One photograph in particular (labelled "20200803_(2).jpg) is, I find, absolutely atrocious. I find that the landlords' assertion that the garbage bins were cleaned and emptied six days a week to be rather difficult to believe. That having been said, there are 169 rental units in the high-rise building in which the tenants reside (or used to reside); that is a lot of garbage being produced, and it is unreasonable to believe that a rather small garbage bin area to be clean and neat. As noted by the tenant, the garbage area – which is open to the elements – is and was plagued by rodents, skunks, seagulls, along with drug needles and other dangers. The landlord has made efforts to remedy these issues by installing a secure fence, barbed wire, and a locked door.

It is not in dispute that the provision of garbage collection services is a material term of the tenancy agreements. The issue in this dispute is whether the services are adequate. The tenant and his witnesses spoke of the issues with the garbage. One of the witnesses (who is not a party to this dispute) testified that she stepped on a needle. The landlord submitted that they have done everything reasonable to secure the garbage area. Indeed, she pointed out that they have repeatedly asked the tenants (by way of letters which were submitted into evidence) to lock the gate behind them, but apparently many have not.
Section 32(1)(a) 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."

"Residential property" includes (as per section 1 of the Act) "a building, a part of a

building or a related group of buildings, in which one or more rental units or common areas are located." This therefore includes the garbage disposal and bin area.

While the tenants' dozens of photographs depict a filthy garbage area (though the landlords' photographs taken more recently would suggest otherwise), there is no evidence put forward by the tenants that the garbage bin area within the residential property did not comply with the health, safety and housing standards *required by law.* Therefore, I cannot find that the landlords have breached this, or any other section of the Act, which leads me to come to a basis for which an order may be given.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for (1) an order for regular repairs under sections 32 and 62 of the Act, (2) an order that the landlords provide services or facilities as required by the tenancy agreements or the Act, pursuant to section 62 of the Act, and (3) an order that the landlords comply with the Act, the regulations, or the tenancy agreements, pursuant to section 62 of the Act. Accordingly, those claims are dismissed without leave to reapply.

Conclusion

I dismiss the tenants' applications without leave to reapply.

If either party disagrees with this decision their remedy is to file an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c 241.

This decision is made on authority delegated to me pursuant to section 9.1(1) of the Act.

Dated: January 27, 2021

Residential Tenancy Branch