Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELMONT PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNDCT, FFT

Introduction

The tenants applied for orders for regular repairs (sections 32 and 62 of the *Residential Tenancy Act* ("Act")), for compensation (section 67 of the Act), and for recovery of the application filing fees (section 72 of the Act). I note that the tenants made an application on November 27, 2020 and then made another application on January 24, 2021. Both applications were heard at this hearing on February 19, 2021, and this decision will address both applications.

All parties attended the hearing which was held by teleconference. No issues of service were raised by the parties.

Issues

1. Are the tenants entitled to an order for repairs?
2. Are the tenants entitled to compensation?
3. Are the tenants entitled to recovery of the filing fee?

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 applications. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on July 1, 2009, and monthly rent is $1,199.00. The tenants paid a security deposit of $500.00. There is in evidence a copy of a written Residential Tenancy Agreement. The rental unit itself is in an apartment located on the third floor of a multi-storey apartment building. One elevator provides access to the floors.

From November 17 to December 4, 2020, inclusive, the elevator was out of service. It had broken down. (Apparently not for the first time, the tenants remarked.) The tenants had to find alternative accommodation because one of the tenants is in a wheelchair. He needs a working elevator to access the third floor.

According to the tenants' application, the fire department helped get the wheelchair-bound tenant down from the third floor. The tenants then stayed at a local four-and-a-half-star hotel and incurred accommodation costs of $151.25 per night. They seek to recover the cost of the hotel stay which was $2,268.75. A copy of the hotel invoice was submitted into evidence. In addition, the tenants seek additional compensation in the amount of $50.00 per day for food costs, as they were required to eat out during their hotel stay. No receipts were submitted for any meal or food expenditures.

In respect of the requests for repairs, the elevator is currently working. Two additional repair requests are for (1) an ever-expanding hole in the bathroom ceiling near the shower, and (2) carpet in the common area hallway to be replaced by linoleum. The tenants testified that the hole in the bathroom has been unrepaired for some time. The landlord stated that they would "be happy to take a look." He noted that there is no evidence or photograph of the hole, however.

The carpet, the tenants testified, is old and that if (or when) the tenant accidentally falls out of his wheelchair, he suffers from carpet burns in trying to get back into the wheelchair. They argue that if the carpet were replaced by linoleum this would not present the same issue.

In rebuttal, the landlord argued that what the tenants are asking for is a superfluous request for an improvement to the property, which is not a landlord's responsibility. He noted that the carpet (which is, according to the tenants, about 20 years old) is in "fabulous condition." What might need to be done, he added, is that it most likely just needs to be stretched. The landlord is more than willing to have that done, he said.

Both parties provided rather extensive testimony and evidence regarding offers made by the landlord regarding accommodation reimbursement costs, and so forth.

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. Application for Order for Repairs

Section 62(3) of the Act states that an arbitrator may make

> any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Section 32(1) of the Act states that

> A landlord must provide and maintain residential property in a state of decoration and repair that
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> (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.

What these two sections of the Act mean, taken together, is that if I am satisfied that an action by a landlord is necessary to ensure that they are meeting their obligations under section 32(1) of the Act, then I have the authority to issue an order under section 62(3) compelling a landlord to take certain actions in respect of meeting those obligations.

In this dispute, the elevator is now working, so I need not make an order that the landlord repair the elevator. Regarding the hole in the bathroom, the tenants provided no argument as to why or how such a hole does not comply with the health, safety or housing standards required by law, and, that such a hole makes the rental unit unsuitable for occupation, as are the required factors under section 32(1) of the Act. As such, I find no evidence that the landlord breached the Act that would give rise to my making an order for the landlord to repair the hole. That having been said, I am satisfied that the landlord will have a look at the hole, as holes in bathroom ceilings are rarely a good thing from a property-maintenance perspective.

Regarding the carpet, the tenants provided no evidence that it does not comply with health, safety or housing standards required by law. While a linoleum floor versus a carpet would undoubtedly be preferred, such a “repair” would in fact constitute an upgrade or a property improvement, which I cannot order. Further, while I am rather skeptical of the landlord’s claim that the carpet is “in fabulous condition,” carpet that is old does not mean that it is therefore unsuitable for ordinary use.

Therefore, taking into consideration the oral 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 orders for repairs. Thus, that aspect of their applications is dismissed without leave to reapply.

2. Claim for Compensation

The elevator was inoperable for a period of 18 days. The rental unit is on the third floor. For whatever reason, the tenants chose to stay in a four-and-a-half-star hotel instead of continuing to reside in the rental unit.

Section 27(1) of the Act states that

> A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

In this case, the landlord terminated (though it was unproven by the tenants whether the termination was from negligence) the elevator service which, I find, is essential to the tenants' use of the rental unit. The landlord restored the service on the eighteenth day of elevator inoperability.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Prima facie, I must find that the landlord breached section 27(1) of the Act. However, what I am not persuaded by is the tenants' argument that the inoperable elevator lead to them incurring losses of $3,220.00. The cost of hotel accommodations does not, in my mind, represent the losses that actually flowed from the elevator not working. Indeed, the tenants (including the tenant in the wheelchair) were in fact *in* the rental unit when the elevator broke down. The tenants provided no explanation as to why they then had to vacate the rental unit for a period of 18 or more days. One of the tenants does not use a wheelchair and from all accounts would and could have used the stairs.

Moreover, the tenants may have already been in the more expensive hotel when the offer from the landlord came through but provided no reasonable explanation as to why they could not have moved into the less expensive hotel. Further, while I am well acquainted with the Gorge Road stretch in which the less expensive hotel is located (having lived in Greater Victoria for most of my life), there is no persuasive evidence before me to find that the tenants could not have relocated to minimize costs.

Based on the tenants' evidence, I am unable to conclude that they have proven losses in excess of two-thousand dollars that were incurred as a result of an inoperable elevator. That having been said, I do award nominal damages in the amount of $500.00; 18 days is, I find, an excessively long time to have an elevator repaired.

Finally, in respect of the tenants' claim for compensation for food and meal expenses, I do not find that the elevator's not working is somehow linked to those expenses. The tenants could have presumably eaten their meals in the rental unit, and as such any food costs are entirely the tenants' responsibility. Even if I had found that the tenants assumed food costs as a result of the elevator not working, there is no supporting documentation such as receipts for actual monies spent on food.

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 compensation related to food and meal expenses. That aspect of their claim is dismissed without leave.

3. Claim for Recovery of the Application Filing Fees

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the tenants were partly successful (in respect of proving a breach of the Act for which nominal damages are awarded), I grant their claim for one of the two $100.00 filing fees.

Summary of Award

In total, I award the tenants compensation in the amount of $600.00. A monetary order is issued in conjunction with this decision, to the tenants.

Conclusion

I hereby grant the tenants' applications, in part. I dismiss the remaining aspects of the applications without leave to reapply.

I hereby grant the tenants a monetary order in the amount of $600.00, which must be served on the landlord. If the landlord fails to pay the tenants, then the tenants may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

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

Dated: February 22, 2021

Residential Tenancy Branch