Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for repairs - Section 32;
3. An Order for a rent reduction - Section 65;
4. An Order for the Landlord's compliance - Section 62; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Tenant confirms that it has only one claim for each claim set out in its application and that this claim is for a rent reduction of 25% of $1,257.12. Given this confirmation I dismiss the claims for compensation, repairs and the landlord's compliance.

The Tenant seeks to amend its application to include another party "SI" as Landlord. The Landlord consents to this amendment. Given the Landlord's consent this Decision adds SI as another party.

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of its filing fee?

Background and Evidence

The following are agreed facts: The tenancy started in May 2006. Rent of $1,237.13 is payable on the first day of each month.

The Tenant states that it is basing its claim for a rent reduction from the Order given in a previous Decision dated December 20, 2017 (the "1st Decision") and continued with the order given in the Decision dated May 29, 2020 (the "2nd Decision"). The Tenant states that it seeks the reduction for an elevator that was not completed until October 2020 and in relation to a front lawn that has not been completed.

The Tenant states that the original construction project was a building wide renovation project that included the tiling of the elevator. The Tenant assumes that the project would include the front lawn landscaping. The Tenant states that no work was being done on the elevator and lawn at the time of the 1st Decision. The Tenant states that the elevator work was raised at the hearing as set out in the "2nd Decision" wherein the Tenant was given a further rent reduction.

The Landlord states that the 1st Decision granted the Tenant a monthly 25% rent reduction while interior and exterior work was ongoing for over a year. The Landlord states that the construction was finished in 2019. The Landlord states that the 2nd Decision order a rent reduction for January to May 2020 and continuing until the Tenant was given a written confirmation that work was done. The Landlord states that on June 25, 2020 the Tenant received a letter confirming that the work was completed. The Landlord argues that the rent reduction ended at this point. The Tenant attaches a letter from the Landlord dated June 25, 2020 setting out that "construction in the common area and exterior area has been completed since January 2020."

The Tenant states that its claim is being made as both Decisions refer to the common area and that the elevator and lawn are therefore included in the orders. The Tenant states it is therefore entitled to the rent reduction as ordered originally. The Tenant claims a total rent reduction of $1,257.12 made up of the 25% rent reduction for July, August, September, and October 2020 in relation to the elevator and lawn. The Tenant also claims an ongoing rent reduction from November 2020 forward of 25% until the lawn is completed or landscaped.

The Tenant states that the lawn was used during construction for parking equipment and vehicles. The Tenant states that the lawn had to be part of the construction project and needs to be restored. The Tenant states that while the elevator has been working a carpet had been put in place over the original linoleum during the construction and was filthy with pet hair and feces. The Tenant states that the elevator was not tiled until the end of October 2020.

The Landlord states that the original construction plans were to add walls and a mirror to the elevator and that this was completed in 2019. The Landlord states that the flooring was not in the scope of the plans. The Landlord states that carpet was added to the elevator instead of tiles and that the decision to remove the carpet and replace it with tiles was made in the spring of 2020 with the actual work done in October 2020 when the budget was available to the Landlord. The Landlord states that the funds for the tiling did not come out of capital expenditures but was part of an ongoing maintenance budget.

The Landlord states that the lawn was a staging area and never a part of the scope of renovations. The Landlord states that it was originally a grass lawn and is now a grass lawn. The Landlord states that the lawn area is not a part of the common property of the building containing the Tenant’s unit and has a different address. The Landlord states that the title for the Tenant’s building does not include the lawn space areas as the owner holds a separate titled for this area. The Landlord states that there is a

development permit under review for the construction of another building. The Landlord states that it this permit is not approved the area will become a parking a dog run area.

The Tenant states that the Landlord did not include the elevator in its letter about the completion of the construction and that for this reason the ongoing order for the rent reduction still applies. The Tenant states that the pool to which the Tenant has use of is on the same property as the lawn and that since it has access to the pool as a facility and service it assumes it would have access to the lawn. The Tenant states that the lawn used to be used until a wall was erected around the pool.

The Landlord agrees that the Tenant has access to the pool as part of the common area that is confined by the wall. The Landlord states that they have not stopped tenants from using or crossing on the lawn and are currently working with tenants to turn it into a dog park.

Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. The 1st Decision finds that the Tenant was significantly disturbed by the ongoing construction work to the exterior and interior units that occurred over long days and weekends with notable noise. The 1st Decision also finds that the Tenant was without blinds, lost the use of its balcony for a period of time and that the building was not regularly cleaned raising health and safety concerns. The Tenant was awarded a rent reduction of 25% for the period December 2015 to December 2017 and a further "25% reduction in his ongoing rent, commencing January 2018 until the exterior and common area work is completed." The 1st Decision was clarified to mean that the Tenant is entitled to the 25% reduction in his ongoing rent, commencing January 2018 until all the exterior and common area work is completed.

The 2nd Decision notes that the Landlord did not appear at the hearing. It considers the Tenant's undisputed evidence of incomplete construction and common area work arising from the subject matter of the 1st Decision. The 2nd Decision sets out that the only work left incomplete from the subject matter of the 1st Decision was in relation to the floor covering of the elevator and the lawn. The 2nd Decision makes the orders that the Landlord "comply with the order made on December 15, 2017, which allows for a 25% rent reduction until the work to the common areas are completed", that the Tenant "be provided with a 25% refund of the monthly rent paid by tenant for January 2020 through to May 2020 unless the landlord can provide written confirmation that the work has been completed" and that "the landlord provide the tenant with written confirmation that all the necessary repairs or maintenance to the common areas have been completed."

It is clear that, with the exception of the lawn and elevator, the work to the exterior and common areas was otherwise completed at the time of the 2nd Decision. As the 2nd Decision sets out that the only work left incomplete was in relation to the floor covering of the elevator and the lawn, I consider that the 2nd Decision deals with this final matter of renovations and is final and binding on the Landlord in relation to the elevator and lawn. The 2nd Decision orders the Landlord to provide a letter confirming the completion of those repairs and I take this order to mean that at that point the rent reduction would cease. The 2nd Decision did not give the Tenant leave to reapply should the Tenant disagree that the elevator and lawn work was not completed. I take this to mean that the matter of the rent reduction was fully resolved and restricted to an end date by provision of the letter from the Landlord. Given the undisputed evidence that the Landlord provided such a letter, and despite the lack of specific reference to the elevator or lawn, I find on a balance of probabilities that the rent increase ceased at the end of June 2020. As the rent reduction in relation to the elevator and lawn have already been determined in the 2nd Decision without leave to reapply for any reason and as the current claims are identical to and based on the subject matter of the 2nd

Decision and not new repairs or deficiencies, I find that res judicata applies to stop any further dispute over the elevator and lawn, regardless of whether or not the elevator was not included in the renovation plans or whether or not the lawn is part of the common area. For these reasons I find that the Tenant has not substantiated a further rent increase from either the 1st or 2nd Decision and I dismiss the Tenant's application.

Conclusion

The Tenant's application is dismissed.

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: March 31, 2021

Residential Tenancy Branch