



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Comox Valley Affordable Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an order to allow the tenant(s) to obtain a retroactive reduction in rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord's representative (the landlord) confirmed that on January 28, 2021, they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

Preliminary Matter- Request for an Adjournment

Legal counsel for the tenant called into this hearing for the purpose of conveying the tenant's request for an adjournment of the tenant's application. They said that they had no other instructions from the client. In this regard, the tenant's legal counsel (counsel) advised that they had sent a copy of the tenant's one-page request for an adjournment to the landlord. The landlord said that they had received this request within the past 24 hours. In the written request, provided to the Residential Tenancy Branch (the RTB) the

day before this hearing, the tenant advised that their father was in palliative care and was expected to pass away in the next day or two. Their letter included the following:

...Our family is gathered around him & with every breath, we are wondering if it's his last. It is the most stressful situation I've ever been in by far & I simply can't focus on anything except my Dad.

Thus, there's absolutely no way that I can do the hearing tomorrow. I'm very sorry about the timing of this.

Will you please let me know if I can just request an adjournment through this message please, due to these extenuating circumstances that have come up?

If not, please let me know what I would have to do in order to ensure an adjournment, as the hearing is also of paramount importance to me, but it will have to be rescheduled.

I should also mention that I'm still waiting on a few pieces of evidence/reports that are coming in from third parties, which will be very important to my case & in the hearing. I'm hoping the hearing will be rescheduled due to my Dad, but that I can still submit this important evidence when it comes in soon, in time for the newly scheduled hearing...

Preliminary Matter- Analysis of Request for an Adjournment

The RTB's *Rules of Procedure* provide guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, "Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment."

- *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.*

Although the landlord did not object to an adjournment of the tenant's application, they advised that their primary concern is in addressing the tenant's request to repair the

items identified as deficient in the tenant's application (i.e., the kitchen sink and two bathrooms), and in this way comply with their obligations as landlord under the *Act* and the tenancy agreement. The landlord reported that their most recent attempt to repair these items on March 23, 2021, had proven unsuccessful because the tenant once more refused entry to the landlord's tradespeople. The landlord confirmed that they have been attempting to undertake these repairs since October 2020, with entry being denied each time the landlord attempted to schedule this work. The landlord said that they were not opposing the tenant's application to have repairs conducted to the rental unit and indicated that such work could be undertaken by mid-April 2021, if the tenant is willing to allow their tradespeople to have access to the rental unit. They also said that health and safety concerns stemming from the ongoing global pandemic required that no one be present in the rental unit when the repairs are being conducted.

In considering the tenant's request for an adjournment, I observed at the hearing that the tenant applied for dispute resolution on January 18, 2021. Although applicants are asked to provide as much evidence as possible with their original application, they can also submit evidence for consideration at least 14 days prior to the hearing to enable the respondent to respond within 7 days of the hearing. In this case, if this matter were adjourned, it would be unlikely that the tenant's request to submit late evidence would be accepted, given the amount of time the tenant has already had to produce evidence upon which they intend to rely at the hearing of their application.

I noted that the primary issue and the matter of greatest concern at this time remains the tenant's request for repairs to their bathrooms and their kitchen sink. In their application, the tenant noted that it is difficult for their family to have to rely on a single bathroom when they rented a two bathroom rental unit. They also noted that the one bathroom they are able to use is also not functioning correctly.

After considering the criteria outlined above from Rule 7.9, that I was denying the tenant's adjournment request. I advised the parties at the hearing that I was taking this action because I was allowing the tenant's undisputed application for repairs and dismissing the remainder of their application with leave to reply. The discretion to sever portions of an application considered by the Arbitrator as unrelated to the main part of the claim is provided in the RTB's Rule of Procedure 2.3, which reads as follows:

2.3 Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I advised the parties at the hearing that the central issue in dispute appeared to be the repairs that the tenant has been seeking. I denied the request for an adjournment and dismissed the tenant's claim for a retroactive rent reduction of \$400.00 with leave to reapply. By dismissing the tenant's application for the rent reduction with leave to reapply, the tenant has more time to provide the additional evidence they referred to in their request for an adjournment with the new application they will need to submit if they remain interested in seeking a retroactive rent reduction.

Issues(s) to be Decided

Should a repair order be issued with respect to this tenancy?

Background and Evidence

This tenancy began on October 1, 2013. Monthly rent is currently \$426.00, payable by the first of each month.

Since at least September 2020, the tenant has been operating with only one bathroom in this rental unit. In their application for dispute resolution, the tenant described their application as follows:

I have been paying my regular rent amount to have what is described in my tenancy agreement as 2 properly functioning bathrooms in usable condition & good repair. However, 1 bathroom has been totally unusable since mid-September & the other bathroom/toilet barely functions properly & is also in urgent need of repair. I am asking for a \$100/month reduction in the rent, to compensate for the months I've paid to have only 1 poorly functioning bathroom, instead of 2 that should be in good repair.

The landlord entered into written evidence a number of emails in which the landlord had attempted to schedule repairs. As noted above, the landlord remained willing to undertake the repairs to the tenant's kitchen sink and two bathrooms.

Analysis

Section 32 of the *Act* reads in part as follows:

32 (1) *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, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In accordance with the powers delegated to me and in accordance with section 32 of the Act, I order the following:

1. By April 2, 2021, I order the landlord to notify the tenant of at least three suggested times and dates as to when the repairs to the kitchen sink and two bathrooms in this rental unit are to be undertaken.
2. Upon receipt of the landlord's notification, I order the tenant to respond to the landlord within 48 hours by selecting one of the times and dates identified by the landlord and to confirm to the landlord that no one will be present in the rental unit during the selected repair times so as to allow the landlord's tradespeople to undertake the repairs to the kitchen sink and bathrooms in this rental unit.
3. I order the landlord to undertake repairs to the kitchen sink and two bathrooms in this rental unit by April 15, 2021.
4. I order the tenant to ensure that no one is present in the rental unit when the landlord's repairs are being undertaken.

Conclusion

I allow the tenant's application to obtain repairs to their rental unit under the following terms:

1. By April 2, 2021, I order the landlord to notify the tenant of at least three suggested times and dates as to when the repairs to the kitchen sink and two bathrooms in this rental unit are to be undertaken.
2. Upon receipt of the landlord's notification, I order the tenant to respond to the landlord within 48 hours by selecting one of the times and dates identified by the landlord and to confirm to the landlord that no one will be present in the rental unit during the selected repair times so as to allow the landlord's tradespeople to undertake the repairs to the kitchen sink and bathrooms in this rental unit.
3. I order the landlord to undertake repairs to the kitchen sink and two bathrooms in this rental unit by April 15, 2021.
4. I order the tenant to ensure that no one is present in the rental unit when the landlord's repairs are being undertaken.

The tenant's application for a retroactive reduction in rent is dismissed with 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 *Residential Tenancy Act*.

Dated: March 30, 2021

Residential Tenancy Branch