Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF RR OLC FFT

Introduction

The tenant seeks relief under sections 62 and 65 of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing on March 16, 2021, which was held by teleconference. No issues of service were raised by the parties, and I note that only the tenant submitted documentary evidence.

Issues to be Decided

1. Is the tenant entitled to an order that the landlord provide services or facilities required by the tenancy agreement or the Act, pursuant to section 62 of the Act?
2. Is the tenant entitled to an order to reduce rent for repairs, services, or facilities agreed to by the landlord but not provided, pursuant to section 65 of the Act?
3. Is the tenant entitled to an order that the landlord comply with the Act, the regulations, or the tenancy agreement, pursuant to section 62 of the Act?
4. Is the tenant entitled to recover the cost of the application for dispute resolution filing fee under section 72 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on September 1, 2020, monthly rent is $1,050.00, and the tenant paid a security deposit of $525.00. A copy of the written Residential Tenancy Agreement ("Agreement") was submitted into evidence and the agreement indicates that a dishwasher is included in the tenancy (see page 2 of the Agreement).

The tenant testified that when he took occupancy of the rental unit on September 1, 2020, it was his understanding that a dishwasher was to be included in the rent. On September 7, the dishwasher flooded the kitchen and into the lower rental unit. It was then that he realized that the dishwasher was broken. He referred to two roommates who believed that the dishwasher had not been working before the tenant moved in. (Apparently, the roommates had been using the dishwasher as a drying rack.)

The landlord sent over a contractor who made some repairs. He found some faulty piping and repaired this. The tenant used the dishwasher a few more times before it started leaking again. The general contractor came over again and ended up removing the dishwasher from the rental unit a few days after December 9, 2020.

The tenant testified that the landlord accused him of breaking the dishwasher by putting glass (or broken glass) into it, and putting it into the filter. The tenant denies that he broke the dishwasher or put broken glass into it. He remarked that he is “not going to take responsibility for something I didn’t do.” Further, he seeks a reduction of rent ($50.00) to reflect the removal of a material term of the Agreement, namely, the provision of a dishwasher. There has been no dishwasher put back in since the appliance was removed in early December 2020.

The landlord testified that she is very upset by this and hoped that things would not end up in arbitration. She argued that there were no issues with the dishwasher until the tenant moved into the rental unit. “Someone manipulated the plumbing,” she stated, and added that “according to the contractor someone played with the dishwasher” and switched the piping or hosing around. She further commented that there had been no issues with the dishwasher (which was approximately three years old) during the time that the roommates had been there before the tenant.

The rental unit is in a multi-floor house that was built in the mid-1800s. With a house of that age, the landlord explained that she did not want further issues or risks with flooding and thus decided to remove the dishwasher until some future date, when she may consider putting it back in.

The landlord remarked that she thought that the tenant “is an honest guy” but that she, as the landlord, has been covering (that is, paying for) multiple issues related to the dishwasher, the flooding, and the rental unit in general. The landlord opposes any reduction in rent because the landlord is already “not asking the tenant for pay for repairs.” In respect of the broken glass, the landlord argues that the tenant admitted to putting the broken glass in the dishwasher or otherwise having something to do with it.

Further, the landlord argued that because the tenant said that he (temporarily) fixed the problem with the dishwasher that it therefore follows that the tenant must have broken it.

The tenant, in rebuttal, testified that “I never admitted to causing glass to go in there.” And, that “I never once [did] anything to the plumbing . . . I’m not a plumber, I’m a tenant.” The landlord, in rebuttal, testified that “I didn’t ask him to pay for repairs” and that it is the contractor’s word against the tenant’s word.

Analysis

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.

Section 27(1) of the Act states that

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

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.

In this dispute, the provision of a dishwasher (a “facility” for the purposes of the Act and the tenancy agreement) was a material term of the tenancy agreement. While the tenant did not argue that the dishwasher was, or is, essential to the tenant’s use of the rental unit as living accommodation, they did argue that the provision of a dishwasher was a material term of the tenancy agreement. The landlord did not dispute this assertion.

On December 9, 2020, the landlord removed the dishwasher to avoid further water damage to the rental unit and the rest of the residential property. And, certainly, removing the dishwasher for this reason is a reasonable preventative action on the part of the landlord.

That having been said, doing so does not negate the fact that the landlord terminated a facility that was, and is, a material term of the tenancy agreement. I find that the landlord breached section 27(1) of the Act by removing the dishwasher.

As to the landlord's claim that the tenant wilfully or negligently did something to the dishwasher, or put glass in the dishwasher, there is no evidence of this. There are other roommates in the rental unit and the contractor did not appear as a witness to testify as to whether the tenant is a culpable party. As such, I make no further findings as to the tenant somehow being responsible for the inoperable, flood-causing dishwasher. Indeed, the landlord remarked, "sure, maybe it wasn't working when he moved in."

If the landlord is of the opinion that the tenant (or one of the many other occupants of the residential property) are somehow responsible for property damage caused by their negligence, or wilful conduct, then the landlord is at liberty to make an application for dispute resolution under the Act for compensation.

The tenant seeks a retroactive and ongoing reduction in rent to reflect the reduction in the value of the tenancy agreement resulting from the termination of the dishwasher (section 27(2)(b) of the Act). The tenant proposes an amount equivalent to $50.00 per month. Given that this amount constitutes a mere 4.76% of the total monthly rent, I find that it is more than a reasonable amount for a rent reduction.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I therefore find on a balance of probabilities that the tenant has met the onus of proving their claim for a rent reduction.

The dishwasher appears to have briefly worked on and off in September and October, but that it was removed entirely in early December 2020. There is, to date, no dishwasher in the rental unit. Therefore, I award the tenant retroactive compensation in the amount of $200.00. This amount represents the reduction in the value of the tenancy agreement from December 2020 to March 2021, inclusive.

Section 72(2) of the Act states that

> If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord [. . .]

Pursuant to section 72(2) of the Act, I order that the tenant make a one-time deduction of $200.00 from a future rent payment in satisfaction of the retroactive rent reduction.

As to the ongoing rent reduction sought, section 65(1)(f) of the Act states that

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders: [. . .] (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement

There is no dishwasher in the rental unit, despite it being a material term of the tenancy agreement. Until a fully functional and working dishwasher is installed in the rental unit, I order that, pursuant to section 65(1)(f) of the Act, monthly rent shall be reduced by $50.00, effective April 1, 2021.

If a dishwasher is reinstalled – and the landlord retains sole discretion as to whether this is to happen or not – then the reduction will terminate. If the dishwasher is installed at a time other than at the start of or at the end of the month then the parties must determine a pro-rata amount reflecting the provision of the facility.

Finally, 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 tenant was successful in their application, I grant their claim for the $100.00 filing fee. The tenant may make a one-time deduction of $100.00 in a future rent payment in full satisfaction of this award.

Given that the tenant has been compensated for the termination of the provision of a dishwasher, and given that he did not argue that a dishwasher is essential to the use of the rental unit, I decline to grant an order against the landlord under section 62 of the Act in which the landlord would have been required to reinstall a dishwasher. The landlord’s concerns regarding future flooding and water damage are very much legitimate, reasonable reasons to not have a dishwasher in the rental unit.

Finally, I make no additional order under section 65 of the Act, which would have ordered the landlord to otherwise comply with the Act, the regulations, or the tenancy agreement. These two aspects of the tenant’s claims are dismissed without leave to reapply.

Conclusion

I HEREBY ORDER THAT

1. the tenant makes a one-time deduction of $200.00 from a future rent payment in full satisfaction of the retroactive rent reduction award;

2. the tenant makes a one-time deduction of $100.00 from a future rent payment in full satisfaction of the award for the cost of the filing fee; and,

3. pursuant to section 65(1)(f) of the Act, monthly rent shall be reduced by $50.00 effective April 1, 2021.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: March 16, 2021

Residential Tenancy Branch