Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, PSF, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on December 17, 2020, wherein the Tenant sought the following relief:

- an Order permitting the Tenant to reduce their rent payment by the cost of services or facilities not provided;
- an Order that the Landlord make repairs to the rental unit;
- an Order that the Landlord provide services or facilities as required by the *Residential Tenancy Act* (the "*Act*") or the tenancy agreement; and,
- recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 9:30 a.m. on March 16, 2021. Both parties called into the hearing. The Tenant was also assisted by his executive assistant, P.K. The Landlord appeared as did her legal counsel, A.D. All present were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on April 19, 2021. This Decision was rendered on May 28, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Tenant entitled to an Order permitting the Tenant to reduce their rent payment by the cost of services or facilities not provided?

2. Is the Tenant entitled to an Order that the Landlord make repairs to the rental unit?

3. Is the Tenant entitled to an Order that the Landlord provide services or facilities as required by the *Residential Tenancy Act* (the "*Act*") or the tenancy agreement?

4. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

This tenancy began April 1, 2020 for a fixed term ending March 31, 2023. Monthly rent is payable in the amount of $5,700.00. The rental unit is a high-end luxury rental property with a private elevator.

The nature of the Tenant's claim relates to an inoperable elevator safety phone, absent wine cooler and dirty blinds.

The parties appeared before Arbitrator Senay on August 25, 2020 and October 23, 2020. The file number for that matter is included in the unpublished cover page of this my Decision.

In terms of the issues before me and, the elevator telephone, Arbitrator Senay Ordered as follows:

> ***"I therefore order the Landlord to take any steps necessary to ensure the telephone in the elevator is functional, as soon as is reasonably possible."***

At the first hearing before me on March 16, 2021, the Tenant testified that the elevator phone was still not functional. He stated that the Landlord kept delaying the appointments, the Tenant alleged the Landlord was not acting in good faith to address this issue which should be a simple fix.

The Tenant confirmed that he sought compensation for loss of use of the elevator telephone in the amount of $100.00 per month retroactive to July 23, 2020, the date he filed the application which was the subject of the dispute before Arbitrator Senay.

The hearing occurred over two separate dates. When the hearing reconvened on April 19, 2021, the Tenant stated that the elevator phone was repaired the very next day after the hearing on March 16, 2021 when the Landlord was warned about possible administrative penalties for failure to comply with Orders of the Residential Tenancy Branch. The Tenant noted that after 10 months of requests, an Order from Arbitrator Senay, it was finally the possibility of an administrative penalty which made the Landlord act.

In terms of the wine cooler Arbitrator Senay found as follows:

> ***"As the Tenant has failed to establish that he should have been provided with a better quality cooler than the one offered by the Landlord, I find that the Tenant did not act reasonably when he refused to accept the wine cooler that the Landlord arranged to have delivered in early July of 2020 . As the Tenant did not act reasonably when he refused to accept delivery of the wine cooler, I find that h is not entitled to compensation for being without a wine cooler for any period between July 01, 2020 and December 15, 2020. In the event the Landlord does not take reasonable steps to install a wine cooler prior to December 15, 2020, the Tenant retains the right to file another claim for loss of quiet enjoyment."***

The Tenant testified that the Landlord did not install a wine cooler prior to December 15, 2020. Rather, he stated that a week before December 15, 2020, the Landlord sent a model number to the Tenant. The Tenant sent the model number to a wine specialist, who stated that the model proposed by the Landlord was a fire hazard as it was not designed to be installed within a cabinet.

In support the Tenant referred to an email dated December 19, 2020, which he received from the specialist who wrote that the unit proposed by the Landlord was not

appropriate for the cabinet space. A copy of the email was provided in evidence before me.

The Tenant confirmed that he informed the Landlord that the proposed unit was not appropriate, following which the Landlord did not take any steps to replace the wine cooler.

The Tenant stated that he then contacted an appliance dealer and negotiated a discount to install the appropriate wine cooler (which is approximately $2,000.00) and to have it installed before Christmas as he was having family attend at that time. The Tenant then informed the Landlord of this and the Landlord did not follow through.

The Tenant stated that in response the Landlord's agent, wrote an email to him on December 19, 2020 informing him that "you will either allow the wine cooler to be delivered or you won't". A copy of this email was also provided in evidence before me. The Tenant stated that this was the end of the discussion.

In terms of the blinds, the Tenant testified as follows. He stated that the blinds in the bedroom, which provide privacy, did not work and as a result of having to manually raise and lower them, they are covered in dirt and finder prints. He stated that he first discovered the blinds did not work as of August 2020 and at that time he informed the Landlord of the problem to which the Landlord responded that they would fix it. As of December the blinds were still not repaired such that the Tenant sent an email to the Landlord on December 9, 2020. Although the blinds were fixed on the 14th, the blinds have not been cleaned. In this respect the Tenant sought $50.00 per month for five months, or $250.00.

The Tenant also sought an Order that the Landlord clean all the blinds in the bedroom to ensure they match the other blinds.

In response to the Tenant's claims, counsel for the Landlords provided the following submissions.

Counsel confirmed that the Landlord parted ways with the property manager.

Counsel submitted that the elevator phone has been dealt with, such that the only question left to be answered is whether the Tenant is entitled to monetary compensation for loss of use of the elevator phone and for how long.

Counsel submitted that Arbitrator Senay already determined the compensation for the loss of use of the elevator telephone as $60.00 per month from July 23, 2020 to October 30, 3020 such that any further compensation should be at this rate. Counsel further noted that the Tenant has been reducing his rent according to the Senay Decision and is therefore already getting what he is entitled to according to the Senay Decision.

With respect to the wine cooler, counsel for the Landlord submitted that the question is, did the Landlord take reasonable steps to replace the wine cooler? Counsel confirmed that it is the Landlord's position is that the Landlord has the right to install whatever wine cooler they want to, its not up to the Tenant's standards, it is what is reasonable.

Counsel further submitted that the salesperson with whom the Tenant communicated said "it could be a fire hazard", but that is not determinative. Counsel submitted that the onus is on the Tenant to prove that it was not safe for installation. Counsel also submitted that the Landlord did their due diligence and did the necessary research to decide what would go in their home. He continued that the Landlord found themselves in the same position as in May: a wine cooler was proposed and the Tenant refused in July; following which the Tenant then refused the wine cooler in December, claiming it was not safe. The Landlord's position is that the Tenant believes it is insufficient, the Landlord has taken reasonable steps. The wine cooler has not been delivered, because there have been two attempts at delivery and both times delivery has been rebuffed.

In terms of the blinds, counsel noted that this was not raised in the hearing before Arbitrator Senay. He stated that they were fixed. Should the Landlord be responsible for the cleaning of the blinds for them getting dirty when they were broken. Counsel submitted that the Tenant did not specify the time when the blinds were broken. Counsel submitted that a Landlord is not responsible for cleaning of the blinds. The obligation is to fix, and the Landlord did so.

In reply to the Landlord's counsel's submissions the Tenant submitted as follows.

The Tenant submitted that the Landlord had no intention to fix the elevator phone because $60.00 a month was not worth it to them, and it was only when they were warned about administrative penalties did they act.

In terms of the wine cooler, the Tenant stated that the wine cooler was not appropriate for the space, it was a safety issue. The Tenant stated that the Landlord is using delay tactics. He noted that the model they suggested was the same as the one in July. It

was not the same size and was not comparable to the one that was there when the Tenant moved in.

The Tenant noted that he pays $6,000.00 a month and this is a $4 million townhouse. He pays a luxury price and he deserves luxury amenities, yet they want to give him a wine cooler that is substandard and is unsafe.

The Tenant also noted that the Landlord took five months to fix the blinds and five requests. If the Landlord had fixed the blinds right away, they Tenant would not have had to raise and lower then by hand, which caused the blinds to be dirty. You can't just clean one blind and leave the others as there are five that need to be cleaned. He also noted that he had to use them even when they were broken as the buildings across can look right in if they are open.

Analysis

After consideration of the testimony and evidence before me and on a balance of probabilities, I find as follows.

As counsel for the Landlord aptly noted, it is not open for me to revisit matters which have been decided by Arbitrator Senay by operation of the principle of *Res Judicata. Res judicata* ("the matter is judged") prevents a party from pursuing a claim that has already been decided. *Res Judicata* is an equitable principle that, when its criteria are met, precludes relitigation of a matter. There are a number of preconditions that must be met before this principle will operate:

1. the same question has been decided in earlier proceedings;

2. the earlier judicial decision was final; and

3. the parties to that decision (or their privies) are the same in both the proceedings.

In this case, Arbitrator Senay's decision set parameters to some extent on the issues left open for me to decide. As she dealt with the elevator phone and the cooler, I am bound by her findings and orders in that respect.

For instance, Arbitrator Senay found that the elevator phone was to be repaired. The evidence before me confirms that the Landlord did not make this repair until the day after the first hearing before me. In doing so, I find the Landlord acted unreasonably prior to the repair, as it is clear this was not a difficult issue to resolve.

The Tenant argues that the $60.00 per month amount awarded by Arbitrator Senay was so nominal that it did not incentivise the Landlord to make this much needed repair. He noted that only when I reminded the Landlord that they might attract administrative penalties of $5,000.00 a day for not making required repairs did this occur. While I cannot increase the $60.00 amount of rent reduction ordered by Arbitrator Senay, I agree with the Tenant that this sum may not have sufficiently encouraged the Landlord to act.

In any event, I was informed the Tenant continued to reduce his rent by $60.00 a month such that he has already been compensated for loss of use of the elevator phone. **I therefore dismiss his claim for a further $100.00 per month rent reduction.**

With respect to the wine cooler, Arbitrator Senay was clear that the Tenant's claim for compensation to December 15, 2020 was dismissed. It is not open for me to revisit this finding.

The evidence confirms the Landlord communicated with the Tenant on December 17, 2020 and essentially told him to take what was offered. The evidence also confirms the Tenant asked the Landlord for an assurance that the model proposed was not a safety concern. While it may be that the Tenant's initial concerns were aesthetic, I accept his testimony that he was genuinely concerned the unit posed a safety risk. I am satisfied based on the evidence he provided that the unit proposed by the Landlord was inappropriate.

Section 32 of the *Act* provides as follows:

> **Landlord and tenant obligations to repair and maintain**
>
> **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.
>
> (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

> (3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
>
> (4)A tenant is not required to make repairs for reasonable wear and tear.
>
> (5)A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement

The Tenant argues that he has an expectation that the Landlord will maintain the property to a higher standard due to the $6,000.00 per month rent in the luxury apartment. I agree. Section 32(1)(b) provides that a Landlord must maintain the property having regard to the age, character and location of the rental unit; in this respect I find the Tenant is entitled to higher expectations based on the premium he pays for this luxury apartment. While a smaller countertop wine cooler would suffice, and the blinds may have some dirty and scuff, the Tenant pays a premium in rent and the Landlord accepts those monthly payments. This is a mutual relationship and it is reasonable for the Tenant to expect the Landlord will maintain the rental unit as a luxury apartment for the rent paid.

I therefore grant the Tenant's request for monetary compensation for loss of use of the wine cooler. Arbitrator Senay dismissed his claim up to an including December 15, 2020. I therefore find he is entitled to compensation from that date to the date the cooler is replaced with a comparable unit, which is guaranteed to be safely installed in the cabinet. I award the Tenant $100.00 per month for January, February, March, April and May 2021. The Tenant is entitled to $50.00 per month for December 2020. Should the Landlord not replace the wine cooler as of June 15, 2021, the Tenant may increase his rent reduction to $500.00 per month until the cooler is replaced. I find that such compensation will incentivize the Landlord to address this matter in a timely fashion.

I also order that the Landlord attend to cleaning of the blinds. I agree with the Tenant that to have only one set cleaned will cause them to be mismatched. I also agree that had the Landlord attended to this request in a timely fashion cleaning would not be required. I therefore Order the Landlord to have the blinds cleaned by June 15, 2021.

Should the Landlord not comply, the Tenant may further reduce his rent by $100.00 per month until the month after the Landlord complies.

As the Tenant has been successful in his application, I also award him recovery of the $100.00 filing fee. Pursuant to section 72 of the *Act,* he may reduce his next month's rent accordingly.

Conclusion

The Tenant is entitled to a monthly rent reduction of $60.00 per month for loss of use of the elevator phone. As the elevator phone has been repaired as of March 17, 2021, the Tenant is no longer entitled to reduce his rent as of April 1, 2021. Since the Tenant has already been reducing his rent by $60.00 his request for additional compensation is dismissed without leave to reapply.

In terms of the wine cooler, the Tenant is entitled to a retroactive rent reduction in the amount of $550.00 for the months December 2020, January, February, March, April and May 2021 in the amount of $100.00 per month. The Tenant may reduce his next month's rent accordingly. Should the Landlord not replace the wine cooler as of June 15, 2021, the Tenant may increase his rent reduction to $500.00 per month as of July 1, 2021 and continuing until the cooler is replaced.

By no later than June 15, 2021, the Landlord shall ensure all the blinds in the rental unit are professionally cleaned. Should the Landlord not comply, the Tenant may reduce his rent by $100.00 per month until the blinds are cleaned.

The Tenant may also reduce his next month's rent by $100.00 as compensation for the filing fee.

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: May 28, 2021

Residential Tenancy Branch