



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order to reduce the rent for repairs, services or facilities agreed upon but not provided; and an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed; and for an Order for the Landlord to Comply with the Act or tenancy agreement.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Before the Parties testified, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

The Tenant said she did not serve her evidence on the Landlord, because she did not know she was supposed to do this. The Landlord said he did not serve his financial evidence or the contractors' receipts on the Tenant. because he did not want to share this private financial information.

I told the Parties that I could not consider the evidence that they uploaded to the RTB, and that if I dismiss any claims because of insufficient evidence that I would be dismissing with leave to reapply. I asked the Tenant if she would rather withdraw her claim at this point (pre testimony), so that she can reapply and serve her evidence on the Landlord. The Tenant said she would rather have the hearing today and use her testimony for evidence.

Issue(s) to be Decided

- Is the Tenant eligible to have her rent reduced for repairs, services or facilities agreed upon but not provided, and if so, by how much?
- Should the Landlord be ordered to make repairs to the unit or property, and if so, what repairs?
- Should the Landlord be ordered to comply with the Act or tenancy agreement, and if so, in what way?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on January 16, 2021 and runs to January 16, 2022. The tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$1,100.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$550.00, and no pet damage deposit.

#1 Reduce Rent for Repairs, Services or Facilities Agreed upon but not Provided

In the hearing, the Tenant said:

When I first moved in, there was no door there separating the other suite. I could hear everything – a lot of noise in the morning. He said only his sister and his son were living here, then I found out four people are living there. He said he didn't know they were coming to stay. I asked for a solid door – to soundproof it. I'm still woken up by the baby's crying – it's really loud – I couldn't study, concentrate. The only reason I moved to the studio, . . . I still have studying to do. I contacted people that put up the doors, and he said [the Landlord] didn't want to do it. I talked to [the Landlord] and asked him why not . . . he didn't like the work. Contacted one more person to . . . another thing with a panel.

The door did get fixed, but I said maybe you could put up some panels. I also

had to wait another week. He said it might be here on the 30th. It has been installed. It's just since those days – I couldn't sleep; I was in a bad mood, because of noise.

She said that after the door was installed, it was still really noisy. She said:

The fridge is at the door; I can hear them when they're in there. One guy who lives there also. The panels are sound proofing panels and they were installed in both units. That happened on January 30. There was about two weeks of noise.

In terms of what she seeks with this proceeding, the Tenant said the following in her Application:

I have been here since Jan 16th, and he said it will not be done until after January 30th, 14 days of rent for \$1100 is \$513.333 and so I am requesting just half of it off from the noise which will be \$256, and additionally i had to cancel my plans and not attend my online classes I paid for because of the repairs. Additionally I had to contact the carpenters myself because [the Landlord] would not call them on time and tried to take his time.

[reproduced as written]

The Landlord said:

Corrections are in order. Notice the date [the Tenant] moved in was January 16, and the door was installed on January 23rd – one week's time. Within one week I installed a new door.

When asked how he knows/remembers on what day he installed the door, the Landlord said:

I had face time with the contractor who installed it on the 23rd. Also, I asked [the Tenant] if she was satisfied with the work. The next day I installed the panels. The shipping was on the 30th. I couldn't arrange a contractor without the panels on hand. I left the panels in there for 22 hours and then can install them. The panels arrived early, and the contractor installed them on the 30th.

The Tenant said:

I feel like it should have been done before I moved in there. I wasted a lot of my time doing it. I understand it was fast, but I still feel that should be done before.

I saw it before I moved in. The door was hidden in the corner, and I didn't look around enough to know it wasn't a fully locked door. And I didn't know there were going to be that many people in the suite.

The Landlord said:

On the other side, my sister lives there. The door was there before and locks properly on both sides, but it's a hollow door. My sister's son goes to high school. They happen to have a new born and the father lives in China full time, but he is stuck here because of Covid. I agreed... previously [the Tenant] said she would pay 50% of BC Hydro. So, I agreed my sister was also complaining with [the Tenant] . . . and my sister had moved the fridge to cover the door, as well. There's not too much noise . . . [the Tenant] plays a lot of music, and a lot of time web cam streaming, . . . I've prevented those noises from passing to the other unit.

#2 Order for Repairs to the Rental Unit

The Tenant said the main repairs have now been completed, although she said there are still some items that she checked off on the condition inspection report that need to be repaired. The Tenant said in the hearing:

I sent it to him in an email and picture message – just generally, not for this hearing. Before I moved in there was a hole in the screen – that needs to be fixed. And a few dents in the wall. The dents in the wall are small, quarter sized – just want to know they were there when I moved in.

The Landlord said:

I did send an email when she moved in. I told her to take pictures of the evidence, and some damage is superficial, and she can live with it. A dent on the fridge – take pictures; I'm not going to charge you. Also dents in the wall – take pictures. She agreed. So, we kept all the evidence, and there's a sliding door issue, and the bathroom door won't close properly – fixed already. That's the only items that were noted.

The screen – was mentioned, she mentioned it today and I'll arrange a contractor to fix the screen for her. I didn't know this was an issue until today.

The Tenant said that she would be satisfied if the screen is fixed shortly

#3 Order the Landlord to Comply with the Act or Tenancy Agreement

In her Application, the Tenant described this claim as follows:

He wants to charge me 50% for utilities, but they have 3 people next door as I have 1 person. I should be paying 25% for the utilities. And their wifi does not work either, very faulty. He did accept the fact that I will be accessing their wifi. I asked if it was just us 2 sharing the suite. He just ignored my question, so I assumed it was correct as he said it was only sister and son.

[reproduced as written]

In the hearing, she said:

I think I [made this claim] because of the internet and utilities. Because I pay 50% of utilities, not fair – four in the other suite. I should be paying 20 or 25%. I also have a lot of problems with the internet; it's always not working. I only use it for school.

He only said he is willing to reduce it. I'll read the message. He said, 'I would have agreed with your request of paying 25% of the electricity bill as well, if we had civilized conversation.' He hasn't sent me an email or a price.

In answer to my question of what the Tenant wants the Landlord to do in this matter, the Tenant said: "I don't think it's worth paying 25%. I would want to pay 20% - I think he needs to upgrade, because there are so many people using it. It drags a lot. I am 20% of the tenants – because they have four people."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

Pursuant to section 7 of the Act, a party who does not comply with the Act, regulation or tenancy agreement must compensate the other party for the resulting damage or loss. Policy Guideline #16 states that damage or loss is not limited to physical property only, but also includes less tangible impacts, such as loss of quiet enjoyment of the rental unit.

Section 7 states that if a party does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for the damage or loss that results.

#1 Reduce Rent for Repairs, Services or Facilities Agreed upon but not Provided

The Parties disagreed on when the door was installed. The Tenant said it was installed on January 30, 2021, but the Landlord said it was installed on January 23, 2021, and that the soundproofing panels were installed on January 30, 2021. As I cannot consider the Parties' documentary submissions, because they did not serve each other with them, I can only rely on their testimony in this regard.

However, as Applicant, the Tenant has the burden of proof on a balance of probabilities in this hearing, and she did not indicate how she knew the door was installed on January 30, 2021. Further, the Landlord said he knew when he installed the door, because he had digital meeting with the contractor. I find that this evidence supports the Landlord's testimony more than the Tenant's testimony supports her version of events in this regard. Rather, the Tenant said: "The door did get fixed, but I said maybe you could put up some panels. I also had to wait another week. He said it might be here on the 30th." I find that this statement supports the Landlord's version of when the door and panels were installed, respectively.

Accordingly, I find that the door was installed on January 23, 2021, and that the soundproofing panels - a greater level of quiet for the Tenant - were installed on January 30, 2021.

Based on the evidence before me overall, I find that the rental unit was without a door for a period of seven days at the start of the tenancy – from January 16, 2021 to January

23, 2021, and without the soundproofing panels for 14 days. The Tenant's rent is \$1,100.00 per month

I find that the lack of a door prevented the Tenant from having security, privacy, and protection from noise coming from the Landlord's suite. The addition of a door and soundproofing panels were important actions for the Landlord to complete. However, I agree with the Tenant that these things should have been performed prior to the start of the tenancy.

I note that section 33 of the Act deals with emergency repairs, which includes "damaged or defective locks that give access to a rental unit". I, therefore, find that the lack of a locking door to the rental unit is a significant defect in the rental unit and that it deprived the Tenant of important features like security, privacy, and noise protection. I find that the Tenant is eligible to be compensated for this loss of security, privacy, and quiet enjoyment of the suite, pursuant to sections 7 and 67 of the Act. I find that the Tenant's request for compensation of half of the rent that she paid for the 14 days is inconsistent with my finding that the door was installed a week after she moved in. I find the installation of the door was the more critical component of the soundproofing and I, therefore, award the Tenant with 50% reduction in rent for the week she was without a door. I also award the Tenant with a 10% reduction in rent for the time she was without soundproofing panels for the first two weeks of the tenancy.

The awards for these matters are calculated as follows:

For the installation of the door:

$$\$1,100.00/31 \text{ days} = \$35.48 \text{ per day} \times 50\% = \$17.74 \times 7 \text{ days} = \$124.18$$

For the installation of the soundproofing:

$$\$1,100.00/31 \text{ days} = \$35.48 \text{ per day} \times 10\% = \$3.55 \times 14 \text{ days} = \$49.70$$

The total rent reduction arising out of the failure of the Landlord to provide the Tenant with a door and soundproofing in the first two weeks of the tenancy is **\$173.88**.

#2 Order for Repairs to the Rental Unit

Section 65 of the Act authorizes the Director to allow a tenant to deduct from rent an amount awarded for costs incurred by the Tenant in terms of maintenance or repairs, when a landlord has been found to not comply with the Act, Regulation, or tenancy agreement.

The Tenant indicated that there were a number of repairs that needed to be done to the rental unit when she moved in. She confirmed that most items on her repair list have

been completed; however, she said there is a hole in a screen that needs to be repaired. The Landlord said that he will do this. As insurance for the Tenant, and pursuant to sections 32 and 65 of the Act, **I Order the Landlord to repair the screen by May 31, 2021**. If the screen remains unrepaired on June 1, 2021, the Tenant **may deduct \$55.00** or 5% from her rent for every month after May that the screen remains unrepaired.

#3 Order the Landlord to Comply with the Act or Tenancy Agreement

In the hearing, the Landlord agreed that the term in the tenancy agreement that requires the Tenant to pay 50% of the electricity bill is unreasonable, given the disparity in the number of occupants in each suite.

Section 6(3)(b) of the Act states that a term of a tenancy agreement is not enforceable if the term is unconscionable. Policy Guideline #8 ("PG #8") is a guideline that deals with unconscionable terms in a tenancy agreement. PG #8 states:

Unconscionable Terms

Under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party.

Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors.

A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party. Such a term may be a clause limiting damages or granting a procedural advantage. Exploiting the age, infirmity or mental weakness of a party may be important factors. A term may be found to be unconscionable when one party took advantage of the ignorance, need or distress of a weaker party.

The burden of proving a term is unconscionable is upon the party alleging unconscionability.

I find that common sense and ordinary human experience indicates that it is oppressive or grossly unfair for the Tenant to have to pay 50% of the electricity in this situation. As I understand it, the Landlord's suite houses the Landlord, his daughter, her high-school aged son, her husband, and their baby. There are four adults and a baby using

electricity. I find that even the baby would add to the electricity usage, with extra laundry at the least. However, I find that a reasonable division of the electricity usage would be dividing the usage by the number of adults (including the son) in the residential property. This would mean that each person is allocated 20% of the electricity bill; and therefore, the Tenant would be responsible for 20% of the electricity bill, instead of 50%.

There was discussion in the hearing to this effect, therefore, I find it reasonable in the circumstances, and pursuant to section 6(3)(b) of the Act, to find the current electricity division in the tenancy agreement to be unenforceable, and therefore, it is stricken from the tenancy agreement. Pursuant to section 67 of the Act, I find that the Tenant has suffered a loss regarding overpayment of the electricity bill at the residential property, and therefore, I **Order** the Landlord to reduce the Tenant's portion of the electricity bill to be **20% of the total from the date of this letter forward**.

Summary

Reduction in Rent for Repairs

The Tenant is awarded **\$173.88** in reduction of rent for the Landlord's failure to provide the Tenant with a door and soundproofing for the first two weeks of the tenancy. The Tenant is authorized to deduct this amount from one upcoming rent payment to the Landlord.

Repair Order

Pursuant to sections 32 and 65 of the Act, I **Order the Landlord to repair the screen by May 31, 2021**. If the screen remains unrepaired on June 1, 2021, the Tenant **may deduct \$55.00** or 5% from her rent for every month after May that the screen remains unrepaired.

Order for Landlord to Comply with the Act or Tenancy Agreement

The clause in the tenancy agreement requiring the Tenant to pay 50% of the electricity bill for the residential property is stricken from the tenancy agreement as unconscionable and, therefore, unenforceable. The Tenant is required to pay 20% of the electricity bill from the date of the Decision going forward.

Conclusion

The Tenant is successful in her Application for remedies including an Order for reduced rent for repairs, a repair Order, and an Order for the Landlord to Comply with the Act or

tenancy agreement, as set out above.

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 05, 2021

Residential Tenancy Branch