Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Orca Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP, OLC, FFT

Introduction

The tenant filed an Application for Dispute Resolution (the "Application") on March 29, 2021 seeking the following:

- compensation for monetary loss or other money owed;
- an order that reduces rent for repairs, services or facilities agreed upon but not provided;
- the landlord's compliance with the legislation and/or the tenancy agreement;
- repairs made to the unit;
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on July 15, 2021 pursuant to s. 74(2) of the Residential Tenancy Act (the "*Act*"). The tenant and representatives for the landlord (hereinafter the "landlord") both attended the hearing, and I provided each with the opportunity to present oral testimony. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

At the outset of the hearing, the landlord confirmed they received the prepared documentary evidence of the tenant. This was via registered mail, including the tenant's digital file evidence.

In the hearing the landlord stated that they did not provide documentary evidence for the hearing because they saw the indication "No evidence submitted at time of application" on the Notice document. Because of this, they did not see the need to provide evidence for this dispute resolution process.

Preliminary Matter – dishwasher repair

The tenant provided that there was the need for dishwasher repair; they advised the landlord of this on February 5, 2021. They paid for this work on their own, $253 for service on March 30, 2021. The tenant provided a copy of the invoice for this work in their evidence.

Both parties confirmed the landlord repaid the tenant for this expense, on July 4, 2021. Because of this, I separate this piece of the tenant's claim for compensation. This discrete issue of compensation for monetary loss is dismissed without leave to reapply.

Issues to be Decided

Is the tenant entitled to an order that reduces the rent for repairs, services, or facilities agreed upon but not provided by the landlord, pursuant to s. 65 of the *Act*?

Is the landlord obligated to comply with the *Act*, the regulations and/or the tenancy agreement, pursuant to s. 62 of the *Act*?

Is the landlord obligated to make repairs to the rental unit, pursuant to s. 32 of the *Act*?

Is the tenant entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided parts of the tenancy agreement. Both parties signed the agreement on February 28, 2019 for the tenancy starting on April 1, 2019. The rent amount agreed to is $2,300 payable on the first of each month. In the hearing, the tenant provided that they paid a security deposit of $1,150.

The tenant provided a comprehensive written statement. They describe two issues: a malfunctioning washer/dryer, and the provision of hot water. They note "no response for months" from the landlord, and their attempts to come to a resolution with the landlord over the period of one year.

washer/dryer

For the combination washer/dryer machine, the tenant provides that it does not dry, and “has not been working in any capacity since September 2019.” The washing machine works “intermittently for small loads only.” They note 5 repair visits ensued over the course of the tenancy with no resolution. Further, they describe having to do washing and/or drying at the neighbours. The tenant also described doing this in the basement of the rental unit building “when not in use.”

Early in the tenancy, the tenant contacted the landlord because the machine was leaking water all over the floor and was not distributing soap. They provided a video of a repairperson channeling a water tube into a pot on the floor. According to the tenant’s June 26, 2019 message to the landlord, this visit was for leaking water from the machine; however, the issue of the dryer was not addressed. A second visit did not result in any fix to the dryer. The tenant proposed, as per the technician’s statement, that a different part be installed that could increase the capacity of the dryer; else a separate dryer would be needed. In this message they reminded the landlord that a working washer and dryer is included in the tenancy agreement. They also proposed reduced rent “as compensation for needing a laundromat (or to use the buildings dryer).”

The tenant included the March 18, 2020 emailed response from the landlord. The landlord sets out that there were two visits from technicians, one of whom was the brand specialist. That person confirmed “it’s working fine” and “confirmed the condensation dryer does not dry 100% but again, is functioning.” In this message, the landlord offered for the brand specialist to visit a third time. In response to this, on March 25 the tenant advised they would file for dispute resolution.

On April 3, 2020 the tenant stated that “small tea towels, or a few t-shirts” takes 3 hours to dry and “sometimes works.” Drying times other than this are “8+ hours and at that point destroys fabric and makes the hydro costs exponential.” On April 27, the tenant messaged to the landlord again to ask for a rent abatement and specified what they felt was an appropriate amount. For this discreet issue of the washer/dryer, the tenant proposed 10% rent reduction for each of February, March and April.

By June 4, 2020, the agent for the landlord responded to the tenant to say that the landlord was not willing to add another dryer. They conveyed that “the dryer is in fact working but the condensation dryers do take an extremely long time to dry.” This “does take longer than traditional dryers.”

The tenant described the landlord's dismissiveness on this issue and inability to respond. The landlord sent repair techs to the rental unit; however, this did not provide definitive information on the issue, or a resolution. Moreover, the landlord provided rent abatement for 3 months, for $300.

The tenant provided audio files of service visits from technicians examining the washer/dryer. One tech pointed to "clogged lint" and "not connected" with it being "not designed to have a vent." The other recorded tech described "water vapour just gets stuck in the vent" where it "recirculates and does nothing." Yet another tech speculates that it "doesn't have a vent connection." In the hearing, the tenant described these assessments as "none of them seemed to know how to fix. . ."

The tenant submits this is a 17-month timeframe, up to the time they made their Application. On their Monetary Order Worksheet prepared for this hearing, they claim for 10% of rent, for 21 months in total, from October 2019 including the months leading up to the hearing in July 2021. They also described: "Laundry was done in basement of [building] or booked with . . . friends/family." This claimed amount is $4,830.

In the hearing, the landlord recalled that the tenant first mentioned the dryer was very slow in May 2019. The landlord reiterated that a service tech specific to this brand visited twice to make the same assessment that the dryer was working as manufactured. This is "ventless" drying, so it does take longer. They reiterated this is a smaller rental unit, and the landlord wants to economize space by having only a single machine combination washer/dryer. The landlord disputed that they did not respond to messages on this washer/dryer issue, and submitted their responses were prompt with messaging to both service techs and the owner.

hot water

In their written statement, the tenant also sets out they were with "intermittent hot water" from February 2020 to December 28, 2020. The hot water would run for "5 or so minutes before lukewarm and freezing (in a 10 minute span)". This meant they were not able to have a hot shower. The tank was replaced in January 2021; however, prior to this from February 2020 "the bathtub was not usable." From December 28 to January 21 there was no hot water at all.

The tenant also presented this was the other problem that the landlord would not address in a prompt or appropriate fashion. There was no resolution until January 2021, from the tenant's initial report of the issue in February 2020. Through March 2020 the landlord sent 3 plumbers

and a gas fitter to look at the unit. According to the tenant: “Feedback was unanimous: the tank should be replaced before the water runs out entirely.”

In the tenant’s evidence is an undated response from the landlord showing the hot water tank was a “power vent”, an obsolete model that is neither gas nor electrical. This is a tankless hot water system. Elsewhere in the messaging in March 2020, the landlord advised the tenant that a plumber assessed the machine as being “not big”. Despite this, the previous owner installed a bathtub knowing it would take a lot longer to heat up a bath. In sum, the issue with hot water was due to the size of the tank, which must be replaced by a same size tank due to its location in the rental unit.

The tenant included messages with a neighbour from when they had to schedule shower use time in that neighbour’s unit, when they were without hot water. This was in January 2021. There were messages from other tenants in the building who advised about aging hot water systems and the potential damage that can result if not replaced.

A message from the landlord in March 2020 advised the tenant that a gas fitter would visit to inspect and run a test. The previous plumber advised that “water in the hot water tank [was] running low. . . and . . . that it’s not an emergency but will need to be service[d] very soon.”

On March 25, 2020, the tenant advised the landlord they would file a dispute with the Residential Tenancy Branch.

In April 2020, the tenant inquired about “rent abatement in lieu of intermittent hot water.” In response to this at the end of April, the landlord confirmed that the owners approved of a replacement of the hot water tank. They would ask for the repair tech to “rush the replacement”. In response to this the tenant advised they put a hold on the May 2020 rent payment, awaiting resolution on this issue. At this time, the tenant stated, “future correspondence will be through dispute resolution.” At this time the tenant proposed a reduction of $600 for each of February to July, totalling $3,600.

Also, in April, the tenant made an inquiry to a legal advice source of information. They stated the issue and advised that this was their legal inquiry. On April 9, the person responding to the request advised: “I would have recommended [the Residential Tenancy Branch] which you wish to defer.”

In June 2020 the landlord informed the tenant that a new hot water tank was ordered by the plumber. The landlord here offered the tenant $500 abatement because of the inconsistent hot water, to be deducted from the May 2020 rent. The tenant refused this offer, with their

rationale being a re-statement of the previous issues, also involving the washer/dryer. At this time the tenant advised they started a dispute with the Residential Tenancy Branch, requesting one-half of rent, and one-half of their electricity bills, at the amount of $7,070.

On August 22, 2020, another landlord agent – unidentified – states: “the only way forward is to go through residential tenancy dispute.”

Another message from the tenant in October 2020 shows them offering to pay rent with $500 deducted for October. The tenant proposed then continuing to pay this reduced amount “until these issues are resolved, or we can just set a time to resolve and go back to regular rent payments”. They added that they “would be asking for a much larger abatement from the tenancy board.”

The tenant submitted audio portions of conversations had with the landlord, and different plumbers who visited the rental unit. Plumbers note the “weird model” of the water heater, to say this was “not your standard hot water tank.” Further, the model is “discontinued”, and one audio clip reveals the plumber outlining the intricacy of taking a new water heater up a flight of spiral stairs. Consistent in the recordings is the plumbers’ acknowledgement that the water tank needs to be replaced.

In January 2021, the landlord advised the tenant on a phone call that the water heater is in a very tight space upstairs. They informed the tenant that they told the plumber directly that a replacement had to be done.

The tenant submitted this was a 10-month timespan, with “warm/luke warm/zero hot water”. Here they apply for a rent reduction of 50% of total rent for February – July, and October – December 2020, as well as for January 2021. This claimed amount is $12,650. In the tenant’s submission, this is presented as co-existing with the washer/dryer issue which contributes to their plea for 50% rent reduction.

In the hearing, the landlord presented that earlier on, the information they had from the plumbers and other techs was that the hot water tank was in working order. This was in February 2020 when they first learned of the issue from the tenant. They noted it was impossible to install a larger tank in the space delegated to this in the rental unit. They noted the unit was replaced in January 2021. This was a process that was very difficult given the type of water heater in use, and the structure of the rental unit for its installation.

The landlord reiterated that the messaging they received from the plumbers and techs they hired to examine the issue stated that the hot water tank was working. The landlord also disputed on this point that their responses were slow or non-existent.

request for repairs

The tenant here in their Application focuses on a discrete area where the walls were damaged during the water heater installation process. The included a photo of this separate area in their evidence. In their prepared statement, they describe this as a "giant hole in the upstairs bathroom". They also list the need for shelving replacement, and "hazardous content left behind post tank replacement."

In the hearing, the landlord noted that "holes and debris came later when the landlord went tankless." This is in reference to the hot water heater replacement in January 2021.

contact information and keys

On their Application, the tenant provided that they need "an emergency contact, who responds with immediacy". They also request a second set of working keys. Another building resident gave a copy to the tenant for which they gave a duplicate set for the common entryways.

In the hearing, the tenant specified that the contact information is needed in case of emergency, such as happened with the hot water issue. The tenant noted they now have a fob that works; however, they still need a backup key.

The landlord responded to these issues in the hearing by stating their understanding was that the need for a separate key was for that of a separate wing in the building. They maintained that the key which the tenant uses for entry into their own unit is in working order.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, s. 65 grants authority to make an order granting a rent reduction:

> (1)Without limiting the general authority in s. 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;

While the party who does not comply with the tenancy agreement/legislation must compensate the other, by s. 7(2) the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

<u>washer/dryer</u>

When evaluating the tenant's submissions and evidence, I find they have not provided sufficient evidence to show that damage or loss exists for the problematic dryer. The tenant has not shown that the dryer was non-functional such that it resulted in a loss to them. The service calls do not reveal any flaw with the machine or definitive malfunction. If the tenant relies on these visits to show wilful ignorance of the landlord on a legitimate issue, I can not find the evidence to support that submission in the audio recordings the tenant provided to make this point. I find the audio of the service calls reveals more about the design of the machine rather than any breakdown or incorrect installation. Further, one service call video shows the tech informing the tenant how to properly drain the accumulated water from the machine; I find this step more likely than not contributed to the issue.

Next, I find the landlord responded to the tenant's queries on this dryer issue in a reasonable manner. The tenant has claimed the landlord would disappear and not respond to queries; however, on this discrete point I assign more weight to the fact of a cycle of tech visits, wherein each time the problem was examined in detail.

There also is evidence that the landlord made the query to the owner of the purchase of an alternate washer/dryer set up. I find they did so with the best interest of the tenant in mind.

Because there was no viable solution to the tenant's claims, and with no diagnosis of a definitive flaw in the machine, or an identified problem with its connection, I conclude there is no issue with the working of the machine. The landlord has pointed to this technical design as that being a "ventless" version. I find this is a reasonable explanation for the amount of time that the cycles require for completion, minus any evidence of a definitive need for repairs that was denied or not carried out. The design can add significant laundry time to the tasks needed; however, I find this is an inconvenience with note of the fact that another machine for drying was available to the tenant elsewhere in the building.

Moreover, the tenant did not prove definitively they were without a dryer at any point; rather, their claim centres on the lengthy drying times which is the functionality of the dryer. I find this adds inconvenience; however, it is not a denial of a washer/dryer to them, as specified in the agreement. In sum, there is no breach of the *Act* or the tenancy agreement by the landlord here.

Based on these findings, I make no award for the tenant's request for rent reduction at 10%, for $4,830. I dismiss this portion of the tenant's claim.

hot water

I find there was no question from the landlord on the veracity of the tenant's claim. The tenant did not present any evidence that shows the landlord expressing their doubt or disbelief of the tenant's questions on the functionality of the hot water system in place in the rental unit. I find the landlord sent techs to the rental unit in relatively prompt fashion, and there is a record throughout of the landlord responding to the tenant queries and requests for updates on progress.

There was the issue of abatement that appears in the tenant's evidence. By April 2020 – which is the second month in which the tenant identified an issue to the landlord – the tenant was asking for a $600 per month rent abatement from February to July. This proposal was not accepted by the landlord. Following this, in June the landlord made an offer of a one-time $500 reduction in rent which the tenant did not accept. After this, again in October 2020 the tenant proposed a rent reduction of $500, ongoing until the problem was fixed. I note that the landlord gave a $300 total rent reduction at one point during the tenancy; however, the exact details of this were not set out explicitly in the tenant's evidence and the landlord did not describe this distinct piece of information in the hearing.

With a problem being present and bothersome for the tenant, moves toward rent reduction as a form of recompense were not met favourably on either side. The evidence throughout shows

the tenant reiterating their fundamental position that hot water is something basic to any tenancy or living arrangement; a proper rent amount reduced should reflect that this was not happening.

I note the record also shows throughout the landlord was receptive to the fact that the water heater needed replacing. This did not occur until January 2021 when hot water stopped altogether.

Notable throughout the record is the tenant referring to the Residential Tenancy Branch, and the possibility of dispute resolution to truly uncover the issue. In March 2020 the tenant mentioned making an application for dispute resolution. By June, they informed the landlord that they had filed an application. On my review, the tenant filed an application on June 3, then later withdrew this application on June 26. There was no previous dispute resolution decision in this matter.

From a fairness standpoint, it is difficult to understand why the tenant did not follow through on the dispute resolution process, despite expressing frustration with the landlord's contact method and lack of information. This was even with their efforts at claiming what they feel were fair rent reduction amounts being denied by the landlord, and no firm answers on the water heater being replaced, with unanimous opinion and even agreement from the landlord that a replacement should be happening.

Without this relief of any sort in place, the problem continued until late December 2020, when the hot water stopped altogether.

As per s. 7(2) of the *Act*, a party claiming compensation for damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. Applying this practically, this begins when the person knows the damage or loss is occurring. This is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided. I find the complete loss of hot water toward the end of 2020 could have been avoided had the tenant followed through with dispute resolution. It is not known why the tenant chose not to proceed on this route. The tentative legal advice that they did receive even pointed to this method of resolution, and at one point they stated to the landlord that all communication going forward would be through the dispute resolution process.

Here, the burden to prove they minimized the damage or loss lies with the tenant. There is no reasonable explanation on why they did not pursue dispute resolution when that was a viable means of addressing the issue.

I find the tenant did not explain why they left the issue in abeyance for as long as they did. Despite mention of dispute resolution, they did not follow through to rectify the issue. Because of this, I am not satisfied the tenant took reasonable steps with dispute resolution when the landlord failed to carry out the replacement and further damage occurred. The extent of the loss here could have been avoided; however, it was not. Instead, the tenant here makes their Application two months after replacement of the water heater. Because of this, I make no award for loss in the form of rent reduction, retroactively.

To reiterate, the *Act*, s. 7 provides that a party who requests compensation "must do whatever is reasonable to minimize the damage or loss." I find the tenant had the legal avenue to pursue rectification of the issue. They did not, and I find this was not minimizing the damage or loss when they made this claim after resolution of this issue that was ongoing for 10 months.

On this basis, I make no award for the tenant's request for rent reduction at 50% for 10 months, for $12,650. I dismiss this portion of the tenant's claim without leave to reapply.

request for repairs

The tenant provided evidence of the large hole in the wall still needing to be fixed. I find this is significant repair for which the tenant needs assistance. From the evidence on water heater replacement, I am satisfied this wall and shelf replacement or repair is related to that work from January 2021. I so order the landlord to make repairs to the area in question, by September 30, 2021. There is no evidence of "hazardous debris"; therefore, it is difficult to establish that as a priority.

contact information and keys

The tenant did not present that there was an emergency situation at any time since the beginning of the tenancy. I find their concern stems from lack of direct contact with the landlord, though this is not proven in their evidence. Above, I found the landlord responsive to the tenant's queries within reasonable timeframes, on my review of the tenant's submitted evidence.

On this, I point the landlord to s. 33(2) of the *Act*, which mandates that a landlord must post or give to the tenant in writing "the name of a telephone number of a person the tenant is to contact for emergency repairs." The tenant presented that they had difficulty contacting the landlord. I find this did hamper their efforts at making contact for the purposes of follow up on their queries; however, there was not an emergency situation. For the landlord's reference, I point to s. 33 to show that contact information is essential for all emergencies. I so order the

landlord to provide required information to the tenant forthwith. For the tenant's reference, I note s. 33(1) gives context to what can be understood as "emergency" situations that would require immediate contact with the landlord for repairs.

On the issue of proper keys, the tenant did not present that they were denied any set of working keys or access to the unit or common areas. If so, this would run counter to what is set out in the tenancy agreement as well as s. 28 of the *Act* that provides for use of common areas, free from significant interference. They did not clearly present specific points on this. The landlord was of a different understanding of what the tenant was asking for.

In line with s. 28 of the *Act*, I order the landlord to ensure they provide all required keys to the tenant. Though the tenant did not establish the need for a secondary front door key, the landlord shall provide this to the tenant.

Conclusion

For the reasons set out above, I dismiss the tenant's Application for compensation in its entirety, without leave to reapply. The tenant was not successful on the bulk of their claim. In line with this, I make no award for reimbursement of the Application filing fee.

The separate findings and points for the landlord's compliance are set out in specific sections above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: July 22, 2021

Residential Tenancy Branch