Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Duncan Properties (Property Manager),
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, PSF, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 31, 2020 by the tenant to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided (November 17, 2020 to December 29, 2020), and to have the landlord provide services or facilities required by the tenancy agreement or law.

On March 3, 2021, the tenant filed an amendment to their application to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided (January 2021, to March 2021) and to have the landlord comply with the Act.

This matter commenced on March 26, 2021 and was unable to complete due to insufficient time. The interim decision dated March 29, 2021 should be read in conjunction with this decision.

On August 27, 2021, the tenant appeared, and the landlord's agents. The parties were reminded that they are still under affirmation from the original hearing. Both parties confirmed they were not recording this reconvene hearing in compliance with the Residential Tenancy Branch Rules of Procedure 6.11.

Preliminary and Procedural Matter

At the outset of the hearing the tenant objected to the landlord's agent GB attending the hearing. The tenant argued that in my interim decision that I ordered no further evidence to be permitted.

In my interim decision dated March 29, 2021, I did make an order indicated that no further evidence is permitted by either party. This was because at the start of the

hearing on March 26, 2021, both parties had confirmed that had received all evidence submission.

I did not make any order or restriction on either party regarding who can attend the reconvene hearing and provide testimony. I find the landlord's agent GB is entitled to be at this hearing and is entitled to give testimony.

Issues to be Decided

Is the tenant entitled to a rent reduction for repairs, services or facility required but not provided?
Should the landlord be ordered to provide services or facility required by the tenancy agreement or law?
Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy began on January 1, 2016. Rent in the amount of $620.00 was payable on the first of each month. A security deposit of $310.00 was paid by the tenant.

Rent reduction for loss of heat and hot water

The tenant testified that they seek compensation in the amount of $310.00 for the time period of November 19, 2020 to December 20, 2020, as the landlord has failed to provide hot water and heat to the rented premises during the weekday. Filed in evidence is a copy of the notice to tenants dated November 17, 2020.

The tenant testified that they seek compensation in the amount of $620.00 for the time period of January 3, 2021 to March 3, 2021 as the landlord has failed to provide hot water and heat to the rented premises during the weekday. Filed in evidence is a copy of a notice to tenants dated December 29, 2020.

The tenant testified that the repairs the landlord are doing are unnecessary and that they are only doing it for an investment and no benefit to the tenants. Filed in evidence is a document labelled Ex 9 – construction purposes.

The landlord's agent testified that while they did give the notice to the tenants regarding hot water shut off. The hot water was not turned off all day or even everyday. The

landlord stated the notice was given to the tenants so they would be aware that the water could be turned off at anytime during this period.

The landlord's agent testified that the building consists of a north and south wing and in 2018 the north wing of the building had a significant fire in which half of the units were no longer liveable. The landlord's agent stated and that the other half of the tenants in the north wing were living under horrible conditions. The agent stated that they were eventually able to move all the remaining tenants from the north wing into the south wing so they could start repairing the building. The agent stated no repairs have been done to the south wing except to the heating system as it also shared with the north wing which must be replaced.

The landlord's agent testified that the way the old system worked was that if they had to make a repair to any unit heating or, hot water fixtures the entire building would be shutdown; however, under the new system design only eight units would be impacted, which is a significant benefit to the tenants.

The landlord's agent testified due to the way the boiler systems was setup they had term 12 in the tenancy agreement that states the following,

> "The Landlord shall not unreasonably delay in causing alterations or repairs to be done with due diligence and shall supply premises and services according to statutory standards, excepts that during repairs to the heating facilities, the Landlord shall not be bound to furnish any heat; and the Landlord shall not be liable for indirect consequential damage or damage for personal discomfort or illness, arising from the want of heat, or hot and cold water, or electricity or air condition, or from alteration or repairs to the premises or services."
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> [Reproduced as written.]

The tenant argued while they did not make a list of dates that they were without heat and hot water that should not be relevant as the notices to the tenants should be sufficient proof that they had no heat or hot water.

The tenant argued that clause 12 of the tenancy agreement is contrary to the Act, and Regulations. Therefore, the entire tenancy agreement is void.

<u>Rent reduction for loss of use and enjoyment</u>

The tenant testified that they seek compensation in the amount of $600.00 for the time period from January 4, 2021 and continue to the date of their application for loss of indoor common areas, and surrounding property due to the scales of the building construction and for the reduction in elevator services.

The tenant testified that due to all the construction the indoor common area and the surrounding property of the building it is a full-scale construction site.

The tenant testified that manager's office on the main floor has been turned into a site construction office. The tenant stated that the front entrances would be blocked by large vehicles and they would have to walk three blocks to access the back entrance and often that entrance was blocked. Filed in evidence are photographs which are dated March 2021.

The tenant testified that there are two elevators in the building and that construction workers are always using the elevator to transport material and are in the common area. The tenant stated that they should always have access to both elevator and that waiting is inconvenient. Filed in evidence is a photograph of a construction person using the elevator.

The landlord's agent testified that the managers office was simply relocated within the building and front entrance is not blocked. The agent stated simply because the tenant provided a picture of a large vehicle out front does not support it was blocked. The agent stated it also does not make any sense that the tenant would have to walk three blocks to the rear entrance.

The landlord's agent testified that there are two elevators in the building simply because one elevator might be in use from time to time, it does not mean the tenant can't access the second elevator.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is

claiming compensation to provide sufficient evidence to establish that compensation is due.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 7 (2) of the Act states, a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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
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> (a)complies with the health, safety and housing standards required by law, and
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> (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I reject the tenant's evidence that the landlords are solely making repairs to the premises for there own investment purposes and not for the benefits of the tenants or future tenants. The north wing of the building had a significant fire which displaced all the tenants in that wing and some of those occupants were fortunate enough to find housing in the south wing.

The north wing of the building is being rebuilt and as a result there is construction on site, which is reasonable and would be expected considering the circumstances of the fire. It is also not unreasonable or contrary to the Act, that the landlord is changing the boiler system for the entire property, north and south wing at this time due the age of the system.

I find the tenant's position is unreasonable because when a fire occurs the landlord is obligated under the Act to make repairs to the residential property or alternately the building could be demolished losing housing for the entire south wing.

It is not up to the tenant determine what repairs are required or necessary. The landlord has the right to make repairs to the residential property as they determine necessary.

I find the landlords are complying with section 32 of the Act to make the repairs to the **residential property** to comply with the health safety and housing standards required by law. I find the tenant has failed to prove a violation of the Act by the landlord.

Even though I have found no violation of the Act by the landlord as they must comply with section 32 of the Act, a tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Rent reduction for loss of heat and hot water

Section 27 (1) of the Act states

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

Section 1 of the Residential Tenancy Regulation states,

> (1)The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the *Residential Tenancy Act* or a regulation made under that Act, or any standard term. **If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.**

While I accept term 12 of the tenancy agreement states the landlord will not be bound to furnish heat during repairs; however, a landlord cannot terminate or restrict as service that is essential to the tenant's use of the rental unit as living accommodation. I find term 12 of the tenancy agreement is an attempt to contract outside the Act. Therefore, I find clause 12 must be voided. This does not void the entire tenancy agreement.

While it is not unreasonable for a tenant to be without heat for short duration of time while repairs are made; however, it is the landlord's responsibility to provide adequate heat should the temperature within the living accommodation become below a reasonable standard, if and when notified by a tenant. The landlord can simply rectify this problem with providing an alternate source of heat, such as an electric space heater.

Although the tenant has provided in evidence copies of the notices to the tenants for the heat and hot water shut off. I find that alone is not sufficient evidence to prove they suffered a loss.

The tenant alleges they had no heat; however, the tenant presented no evidence that the temperature in their rental unit was ever below a reasonable standard on any given day. In addition, even if they had they would have to prove that they did what is reasonable to mitigate the loss, such as notifying the landlord that their rental unit was cold due to the lack of heat. This would give the landlord the opportunity to address the tenants concerns and rectify the problem, such as providing the tenant with an alternate source of heat, such as a space heater during this time period. I find the tenant has failed to prove they suffered a loss or that they mitigated the loss.

I am further not satisfied that the tenant did not have adequate hot water. The tenant presents no evidence that they actually suffered a loss or that they notified the landlord that a problem existed. I find the tenant has failed to prove they suffered a loss, or that they mitigated the loss.

Based on the above, I dismiss the tenants request for a rent reduction based on lack of hot water and heat.

Rent reduction for loss of use

In this case, I am not satisfied that simply by the landlord's moving the managers office to a different location within the building has resulted in any loss to the tenant. The landlord has the rights to move their office to any location. If the location is not suitable to the tenant they can contact the landlord by telephone, by email or by sending a letter by mail.

I am not satisfied that the tenant's access to the building was or has been restricted on any regular basis. While I do accept the tenant provided photographs of a large vehicle

and crane outside the front of the building in March 2021. The vehicles are on the roadway dropping of materials that are necessary for the repair of the north wing. I find the tenants has failed to prove this was no more than a temporary inconvenience if they truly could not access the premise. Further, by the photograph it appears that the tenant could walked pass the truck into or out of the building. Therefore, I dismiss this portion of the tenant's claim.

I am also not satisfied that the tenant suffered any loss due the construction crew using one of the elevators or by being in the common area. There are two elevators in the building while it may be inconvenient to the tenant that is only temporary as I have no evidence that there was any significant wait time on a regular basis. Therefore, I dismiss this portion of the tenant's claim.

Based on the above, I dismiss the tenant's application without leave to reapply. I do not find at this time that it is necessary to make any orders against the landlord. The landlord is now aware that term 12 of their tenancy agreement is voided.

Conclusion

The tenant's application is dismissed without leave.

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: September 02, 2021

Residential Tenancy Branch