



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
(CRESCENTVIEW) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP, OLC

Introduction

This hearing dealt with the Application for Dispute Resolution filed by the Tenant under the Residential Tenancy Act (the “Act”) made on April 27, 2021. The Tenant applied for a rent reduction for repairs, services, or facilities agreed upon but not provided, for a monetary order for compensation for loss or other money owed, for an order for the Landlord to comply with the Act and tenancy agreement, and for an order for the Landlord to repair the rental property. The matter was set for a conference call.

An Agent for the Landlord (the “Landlord”) and Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Landlord and Tenant agreed that they had exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this decision.

Preliminary Matters – Issues Removed

At the outset of these proceedings, the parties agreed that the tenancy ended in May 2021.

As this tenancy has already ended in accordance with the *Act*, I find that there is no need to continue in these proceedings in regard to the Tenant's request for an order for the Landlord to comply with the *Act* and tenancy agreement and for an order for the Landlord to repair the rental property as these issues pertain to current tenancies.

I will proceed with this hearing on the Tenant's claim for a retroactive rent reduction for repairs, services or facilities agreed upon but not provided and a monetary order for compensation for loss or other money owed.

Issues to be Decided

- Is the Tenant entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to a monetary order for compensation for loss or other money owed?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant's application records that this tenancy began on February 15, 2017. The parties agreed that rent in the amount of \$2,050.00 was to be paid by the first day of each month and that the Landlord had been paid a \$975.00 security deposit for this tenancy. Both the Landlord and the Tenant testified that the tenancy had ended before the date of these proceedings; the Tenant testified that the tenancy ended on May 1, 2021, and the Landlord testified that the tenancy ended on May 22, 2021.

The Tenant testified that there was persistent flooding of the rental unit each rainy season during their tenancy. The Tenant testified that the basement of the rental unit would back up with rainwater and that even though they informed their Landlord of the

problem, it took the Landlord over a year to resolve this issue. The Tenant testified that during January, February, March, April, September, October, November, December 2020 and January, February, March, and April 2021, they repeatedly had to contact the Landlord, advise them of flooding and clean up the water themselves. The Tenant submitted 17 text messages and seven photographs into documentary evidence.

The Landlord testified that they had received all of the notices from the Tenant regarding the flooding but that there were issues with the construction of this group of townhomes and their location at the bottom of the hill. The Landlord testified that they worked with this Tenant and the other renters in the adjoining units to resolve the problem but agreed that it took over a year for the problem to be fixed.

The Tenant testified that they are seeking a retroactive rent reduction of each month that their unit flooded, consisting of January, February, March, April, September, October, November, December 2020 and January, February, March, and April 2021, in the amount of \$8,000.00 at the rate of \$666.66 per month. The Tenant testified that they lost the use of a bedroom in the basement during the floods and that the basement smelled of mould during this time, making it completely unusable.

The Landlord testified that the amount the Tenant was asking for was too high, as the basement is unfinished and does not contain a bedroom as listed in the tenancy agreement. The Landlord testified that the Tenant still used the basement during the floods for laundry and storage.

The Tenant agreed that they were still able to use the basement for laundry and some storage during the floods but that they had finished the basement themselves by installing another bedroom, with the approval of the previous property manager, and that that space was unusable due to the floods.

The Tenant also testified that they are seeking to recover \$2,500.00 in compensation due to the loss of personal property from water damage caused during the floods. The Tenant testified that they lost a queen-sized bed, a shelf, flooring tiles, and carpet. When asked to show the value of the items claimed, the Tenant testified that they had not included documentation that would show the value of these items in their documentary evidence.

Analysis

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

I accept the agreed-upon testimony of these parties that the basement of this rental unit flooded during the fall and winter months of this tenancy for a period of roughly 12 months of this 28-month tenancy. I also accept the Landlord's testimony that they were aware of the flooding, but that the flooding was caused by a structural problem with the construction of this rental unit and the surrounding units and that it took the owner over a year to find a long-term solution to this problem.

As the parties to this dispute have agreed that the Tenant did experience a reduced use of the basement of this rental unit during the months of January, February, March, April, September, October, November, December 2020 and January, February, March, and April 2021, I find that the Tenant is entitled to compensation in the form of a retroactive rent reduction for the affected 12 months.

However, in determining how much that rent reduction will be, I must consider the layout of this rental property and how the use of this rented space was diminished during the floods. During these proceedings, I find that the parties, in this case, offered conflicting verbal testimony regarding how the flood affected this tenancy and what loss of space occurred during the floods. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, it is the Tenant, as the applicant to these proceedings, who holds this burden of proof.

I have reviewed the documentary evidence submitted into these proceedings by the Tenant, and I find that the Tenant has provided sufficient evidence to satisfy me that their use of the basement of this rental unit was diminished during January, February, March, April, September, October, November, December 2020 and January, February, March, and April 2021 due to persistent flooding.

I accept the agreed-upon testimony of these parties that this rental unit is a three-level townhome and that during the flooding, the Tenant was still able to use part of the basement for laundry and storage. Based on the testimony of these parties and the picture evidence before me, I find that the Tenant lost the use of 15% of the rental unit during the 12 months of flooding during this tenancy. Consequently, I find that the

Tenant is entitled to the recovery of a 15% retroactive rent reduction for the months of January, February, March, April, September, October, November, December 2020 and January, February, March, and April 2021, at the rate of \$307.50 per month.

I grant the Tenant a monetary award in the amount of \$3,690.00, consisting of the retroactive rent reduction for 12 months at the rate of \$307.50 per month.

As for the Tenant's claim for \$2,500.00 in compensation for the loss of personal belongings during the floods. Awards for compensation due to damage are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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 evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

As the Tenant has not included any documentary evidence to prove the value of the amounts claimed for in this portion of their application, I find that I must dismiss this portion of the Tenant's application due to lack of evidence.

Conclusion

I order that the monthly rent for this tenancy is retroactively reduced by \$307.50 per month for the periods of January, February, March, April, September, October, November, December 2020 and January, February, March, and April 2021.

I grant the Tenant a **Monetary Order** in the amount of **\$3,690.00** in compensation pursuant to section 67 of the *Act*. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the Tenant's claim for \$2,500.00 in compensation for the loss of personal belongings.

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 10, 2021

Residential Tenancy Branch