Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI; RR; RP; MNDCT; CNL-MT; FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *"**Act**")* for:

- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order that the landlord make repairs to the rental unit pursuant to section 32;
- a monetary order for money owed or compensation for damage or loss under the *Act,* regulation, or tenancy agreement in the amount of $2000.00 pursuant to section 67;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants attended the hearing scheduled for 11:00 a.m. The landlord was not present at 11:00 a.m. and I waited until 11:05 a.m. to commence the hearing. The landlord called into the hearing 20 minutes after the start of the hearing due to overseas phone connectivity problems.

Preliminary Issue- Service

At the start of the hearing the tenant testified she served the landlord by email with the notice of dispute resolution form and evidence on October 30, 2021. The tenants' confirmed the landlord acknowledged receipt of the information. A copy of the email and confirmation of receipt can be found in the "Evidence" section. I ~~find~~ found that the landlord was served with this package on October 30, 2021, in accordance with s. 88 and 89 of the *Act.*

At 20 minutes past the start of the scheduled hearing the landlord was able to connect via an overseas phone connection. As a result of the delay, I did not canvas the landlord regarding service.

The landlord did not raise any issues regarding service at any time during the remainder of the hearing. As the contents of the landlord's documents are not at issue, they were also admitted into evidence for this decision.

Preliminary Issue- End of Tenancy

The tenant testified that on November 1, 2021, she served the landlord with a written request to end tenancy effective December 1, 2021. The landlord confirmed receipt of the notice. The parties agree that the landlord never issued a Two Month Notice to End Tenancy for Landlord's Use of Property.

Pursuant to s. 62 (4) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. I notified the tenant that since the landlord did not issue a Two Month Notice, there was no matter for me to consider and decide.

I exercise my discretion to dismiss the portion of the tenants' application related to the Two Month Notice to End Tenancy for Landlord's Use of Property, without leave to reapply.

Preliminary Issue- Rental Unit Repairs

As noted above, the tenant served the landlord with a written notice to end tenancy effective December 1, 2021; therefore, the matter of rental unit repairs has no practical application to the remaining tenancy.

I exercise my discretion to dismiss the portion of the tenants' application related to the rental unit repairs, without leave to reapply.

Preliminary Issue- Rent Increase

The tenant confirmed the landlord did not increase the rent to $1990 per month. The tenant filed application anticipating she would stay in the unit. As there was no rent increase, there is no matter for me to consider or decide. I am, therefore, dismissing the tenant's application related to a possible future rent increase, without leave to reapply pursuant to s. 62(4) of the *Act.*

Issues to be Decided

Is the tenant entitled to:

1) an order to reduce the rent for repairs, services or facilities agreed upon but not provided

2) a monetary order of $2000.00 for damage or compensation under the *Act*.
3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenants, not all details of the tenants' submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting February 15, 2021. Monthly rent is $1800.00 and is payable on the fifteenth of each month. The tenant paid a security deposit of $900.00. The landlord still retains this deposit.

The tenant submitted into evidence the WhatsApp conversation chronology from February 2021 through October 2021 between her and the landlord.

On March 25, 2021, the tenant asked the landlord for a reduction in rent [due to the COVID crisis] from the $1800 agreed to in the tenancy agreement. The landlord countered with a decrease to $1725.00 per month, accepted by the tenant. In the same conversation, the tenant stated the *"sofa bed was old and uncomfortable…It is really harf to sit on it…. Even if you cannot change it, I can buy myself a sofa if you can remove it."* [reproduced as written]

No further discussion about the sofa bed replacement takes place in the WhatsApp log until September 20, 2021. The tenant writes, *"Some stuff gotten really old here, like the sofa bed and dishwasher. And since our stay turned to a longer period, I would appreciate if you could possibly make some changes.* The landlord stated, "*No issue if you'd like to replace the sofa bed if you could kindly send a quote for the one you prefer"* (September 25, 2021) and in a subsequent email set the budget at $900 (September 26, 2021).

The tenant testified she ordered the sofa and when it was about to be delivered, the landlord changed her mind about replacing the sofa and asked for higher rent. The tenant contacted the supplier who told her the sofa was on the truck for delivery and recall in the middle of delivery was "hard to do- complicated". The sofa has not been delivered/received; it is being stored in the delivery company warehouse.

Also in September 2021, the tenant notified the landlord about a problem with the dishwasher. Prior discussions about the dishwasher indicated the dishwasher was working but "old". In response to the tenant's text about the problem with the dishwasher, the landlord responded that she thought the dishwasher may still be under warranty. There is no evidence that the landlord followed up on the dishwasher repair.

When asked about the $2000.00 in damages requested, the tenant could not explain how that dollar figure was arrived at but believed she was owed pecuniary damages for inconveniences.

The tenant states she and her husband are still living in the unit. She confirmed that they will vacate the premises on December 1, 2021, by 1:00 p.m. She concluded by stating that she wanted to remain in the unit but felt pressure to leave; hence, she submitted her notice to end tenancy to the landlord.

The landlord's testimony was concise, limited to rent sought and the tenant's Notice to End Tenancy. The landlord clarified confusion around the rent "increase" request. She requests the tenant pay the rent agreed to in the tenancy agreement signed February 10, 2021, in the amount of $1800.00 per month. She testified the reduction to the rent from $1800 to $1725 was a temporary measure put in place for a few months to help the tenants in the COVID crisis, it was not intended to be long term.

In an October 17, 2021, WhatsApp exchange the landlord states,
"There has been a shortfall of $75 months (5 months) in order to help you with the COVID situation it is no problem I understand we all run into issues from time to time & I'm happy to help where I can. If you'd like to settle the amounts owing." In an earlier exchange the landlord writes, "…since COVID I was able to provide relief for the rental unit to help. I will need to return the rent amount to $1990 per month. At the moment the rental payment is not even covering the mortgage payments. Then there is the strata $300 fees. My appologies I cannot afford to continue a loss on the unit. Hope you understand." [reproduced as written]

The landlord reiterated that she tried to be accommodating to the tenant's needs but is not obligated to provide prolonged subsidized housing. It is this text message that cause the confusion with the tenant believing the rent was increasing to $1990. The landlord confirmed that she only expected to return the rent to the $1800 per month as per the tenancy agreement.

The landlord testified that she tried the "amicable approach" and sent the tenant a "Mutual Agreement to End a Tenancy" form and the tenant refused to sign it.

Analysis

Under 6.6 of the Residential Tenancy Branch Rules of Procedure, the "standard of proof and onus of proof" provides as follows. The standard of proof in a dispute resolution hearing is "on a balance of probabilities", which means that it is more likely than not that the facts occurred as claimed. The onus of proof is on the person making the claim.

Issue #1: Reduced rent for repairs, services or facilities agreed upon but not provided pursuant to s. 32

The tenant requests compensation in the amount of $1006.00 through "reduced rent for repairs, services or facilities agreed upon but not provided" under s. 32 of the *Act.* The "repairs, services or facilities" in dispute include the sofa the landlord initially agreed to replace, then changed her mind and the inoperative/broken dishwasher. The tenant submitted a receipt for $1006.00, the cost of the sofa purchased by the tenant. Photos of the old sofa are on file.

The law and policy relied upon are set out below.

Section 32 of the *Act* sets out the landlord's duty to repair and maintain, stating as follows:

> *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.*

Policy Guideline #1 provides guidance in the interpretation of s. 32. Landlords are required to maintain the residential premises to meet "health, safety and housing standards" established by law and must also maintain reasonable suitability for occupation given the nature, location, and character of the property. The landlord is not required to make cosmetic upgrades if the condition of the premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the tenant or landlord.

While the sofa may have been uncomfortable to sit on, there is insufficient evidence that the sofa did not comply with health, safety, or housing standards or was "not reasonably suitable for occupation". The first photo shows an older sofa, and the second photo shows the ripped lining from under the sofa. The furnishings appear to be in keeping with a fully furnished rental unit renting out for $1800 per month.

The landlord did instruct the tenant to remove the old sofa and replace the sofa providing a budget of $900; however, before the new sofa arrived and the old sofa was removed, the landlord notified the tenants she changed her mind stating financial constraints. The sofa is currently located in the delivery warehouse and can be returned to the vendor at no financial loss to the tenant.

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Again, I refer to Policy Guideline #1, Major Appliances. “The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant”.

There is no evidence the problem with dishwasher was caused by deliberate actions or neglect by the tenants; thus, it is the responsibility of the landlord to arrange to repair the dishwasher. For approximately three months, the tenants did not have the use of a dishwasher.

Is a rent reduction warranted for the unrepaired dishwasher? This tenancy was for $1800.00 per month in rent reduced to $1725.00 per month. While the landlord states the rent reduction was a temporary measure put in place to help the tenants during COVID (and there may be documentation about the rent reduction that was not submitted into evidence) the WhatsApp conversation does not specify an end date and appears to renegotiate the rent agreed to in the tenancy agreement and form a bona fide contract. With respect to the requested rent reduction, I find that the tenant is entitled to a rent reduction for the broken dishwasher and the $75.00 reduction for 8 months is adequate compensation.

The application for compensation in the amount of $1006.00 through “reduced rent for repairs, services or facilities agreed upon but not provided” under s. 32 of the *Act* is dismissed without leave to reapply.

Issue #2: A monetary order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement in the amount of $2000.00 pursuant to s. 67.

The tenant requested $2000.00 monetary compensation “for my monetary loss or other money owed”. When questioned the tenant could not qualify how the dollar amount was calculated and left it to the arbitrator to determine if damages for inconvenience is awarded.

The law and policy relied upon are set out below. Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

> *(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
> *(2) 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.*

Residential Tenancy Branch Policy Guideline 16 sets out four criteria to be applied when determining whether compensation for a breach of the *Act* is owed. It states:

> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.
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> [the **"Four Part Test"]**

To reiterate, the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the tenant has the burden to prove the value of the damage or loss established by the evidence.

The tenant has provided insufficient evidence that the landlord failed to comply with the *Act*, regulation, or tenancy agreement. The tenant did not provide a scale, methodology, nor previous decisions of case law with similar facts where the applicant was awarded compensation for undetermined loss. Finally, the tenant must demonstrate that she *acted reasonably to minimize* any *damage or loss.*

Taking into consideration all the oral testimony and documentary evidence presented and applying the law to the facts, I find that the tenant has not met the onus of proving ~~the~~ value of the damage or loss sustained (part 4 of the 4 point test) and has therefore not established that compensation is due.

The tenant's application for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement in the amount of $2000.00 pursuant to s. 67 is dismissed without leave to reapply.

The landlord and tenant mutually agreed to end tenancy on December 1, 2021at 1 p.m. In keeping with this agreement, I am granting the landlord an Order of Possession under s. 44(1)(f) effective December 1, 2021, at 1:00 p.m.

Conclusion

For the reasons set out above, I dismiss the tenant's applications for compensation under s. 32 and s. 67 of the *Act* in their entirety without leave to reapply. The tenants were not successful in their application. In line with this, I make no award for reimbursement of the Application filing fee.

I grant an Order of Possession to the landlord pursuant to s. 55(3) of the *Act*, effective December 1, 2021, at 1:00 p.m. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: December 1, 2021

Residential Tenancy Branch