Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1278867 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, RR, FFT

Introduction

The Tenants (hereinafter, the "Tenant") filed an Application for Dispute Resolution (the "Application") on August 17, 2021 to dispute a notice to end the tenancy issued by the Landlord. Additionally, they applied for a reduction in rent and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on December 21, 2021.

The Tenant and an agent for the Landlord (the "Landlord") attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matters

The Tenant made their Application to dispute the Two-Month Notice issued by the Landlord on August 4, 2021. The Tenant confirmed they moved out from the rental unit on November 30, 2021. Given this fact, I dismiss this piece of the Tenant's Application. The remaining issues are listed below. Though the Tenant-Landlord relationship ended, for ease I refer to the parties as "Tenant" and "Landlord" in this decision.

At the time the Tenant made their Application the tenancy was ongoing. As a matter of monetary compensation, they applied for a rent reduction for repairs, services or facilities agreed upon but not provided by the Landlord. Given that the tenancy has ended, and rent is no longer an agreement between the parties, I amend the Tenant's claim to show it as a matter of monetary compensation with no adjustment of rent.

At the start of the hearing, the Tenant set out they delivered notice of this hearing to the Landlord via registered mail. They provided proof of this delivery in the form of a receipt showing that purchase, including a tracking number. The Landlord confirmed they received this package that included the Tenant's evidence documents.

The Tenant sent out a video to the Landlord in December 2021 via email. The Landlord stated they did not receive this video. Given the 14-day timeline provided in the *Residential Tenancy Branch Rules of Procedure* at 3.14, I do not accept this evidence and it is excluded from consideration.

Similarly, the Landlord provided evidence to the Residential Tenancy Branch on December 17, 2021. They sent this to the Tenant via registered mail and the Tenant did not receive this by the time of the hearing. Rule 3.15 provides a timeline of not less than 7 days before a hearing for the Respondent's evidence. By Rule 3.15 I do not accept this evidence and it is excluded from consideration herein.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant provided a copy of the tenancy agreement between the parties, signed on October 19, 2020. This was for an original fixed term starting November 1, 2020 and ending on October 31, 2021. The rent amount was set at $4,100 per month payable on the first of each month. The Tenant's copy shows the security deposit of $2,050. An addendum shows specifically that "At the end of the tenancy, the lease will not be renewed."

The Tenant moved out from the rental unit on November 30, 2021. The security deposit was returned to them, minus an agreed-to deduction for a utility bill. That amount was $1,085.77. At the outset of this hearing, the Tenant disclosed that they had a "very, very hard time" and they moved out because they were "fed up." They submitted as evidence two prior hearing decisions wherein each Arbitrator cancelled different notices to end tenancy, each time based on the Tenant's application.

The Tenant presented in their written statement there was a different separate hearing regarding their request for urgent repairs to the roof, after they "had asked the landlord to repair the leaking roof ever since they bought the property and no action had been taken until after the results of the hearing on the 29th." They started this present hearing process "based on the arbitrator's advice during the [prior] hearing", to ask for compensation for the damage caused because of the stress and water damage due to the faulty roof. Additionally, they ask for compensation for the cost of repairs to driveway lighting they paid for on their own, and reimbursement for what they deem exceedingly high utility costs.

The Tenant presents that the Landlord's actions, including the ongoing disputes and hearings, have contributed to stress. This impacts their own work, their need to stay in Canada and avoid travel for work, and their children's schoolwork due to anxiety they will have to move. The claim for compensation is for the "significant stress" of the Landlord seeking to end the tenancy, "damages that took [the Landlord] 6 months to repair", and the repair of the driveway lighting.

In another written submission, the Tenant referred to the Landlord's other attempts to end the tenancy, stating "It is clear that the landlord is using the processes available . . . at the RTB in order to make our lives difficult and to force us to move out before the end of our fixed term lease." The Tenant posited that the Landlord sought to end the tenancy in order to sell the property. The basis for the Tenant's claim for compensation is "in recognition of the emotional and financial damage" they experienced.

The Tenant's in terms of a monetary amount is as follows:

a. rent reduction – half of yearly rent = $24,600

The Tenant submitted there were lots of issues under this piece. They initially forwarded a list of 10 items to be repaired to the Landlord on January 11, 2021, a copy of which appears in their evidence. Therein they stated: "The roof is still not 100% fixed as we still have some leakage above the fireplace." They kept communicating the need for a repair to the roof to the Landlord after this, until the April 2021 hearing when an arbitrator ordered repairs to the roof to be completed by the end of May 2021. Aside from the roof, in the hearing the Tenant noted they "had proof that one-by-one that they [i.e., the items on the list] were not repaired."

The Landlord sent "10 to 15 people" to view the roof issue; however, there was no repair undertaken. The Landlord's agent informed the Tenant they would pass the concern to the owner; however, there was no repair despite the Landlord knowing of the issue since

November 2020. The Tenant submitted the roof was finally repaired in May 2021, after the arbitrator in the April hearing ordered it so, finding the need for repair was an emergency.

In addition to "back-to-back" notices from the Landlord to end the tenancy, this meant the Tenant was "suffering all this time". For this, the Tenant claims an amount equal to 6 months of the full amount they paid for rent.

In response, the Landlord noted they completed the emergency repair to the roofing, as ordered by the arbitrator, by the end of May 2021. Prior to this, the Landlord understood the issue with the roof was one involving a warranty which was not the case. They could not hire a contractor to repair the roofing when inclement weather in winter prevented this. After an initial repair in October, the contractor came to revisit the issue and noted the roof needed a custom metal plate for the part of the roof in question. The Landlord noted the invoice they submitted shows extra measures needed for repairs to the roof, and eventually this involved the discovery of another hole in the wall and possible chimney repair.

The Landlord presented that ongoing requests from the Tenant – usually involving "lists and lists of issues" – were unreasonable and constant.

b. unpaid invoice – pathway lightning = $1,583

in the same January 11, 2021 letter to the Landlord, the Tenant described outdoor lighting that "must be fixed due to security and safety from pathway up to garage/parking area." In the hearing the Tenant mentioned there were 2 or 3 estimates for this work and the Landlord had said at some point they were sending their own contractor for this work.

The Tenant stated they "had to hire" a contractor for this work and sent an email confirmation to the Landlord. They provided their emails to the Landlord that show the following:

- February 5: Landlord stated their contractor would visit the following week "to check wiring for security light installation."
- March 8: Tenant provides a quote from a company to install outdoor lighting, as forwarded on January 5th. The Landlord provided at the time they would use their own contractor; however, two months had passed and no action. The Tenant re-stated their security concern so the Tenant would go ahead and hire the company and send the bill to the Landlord.
- March 11: Tenant informed the Landlord they had purchased material for the lighting repair and they had hired the company to install lighting on the driveway: "you are

welcome to pay them directly and deal with them as they are set to come today and fix . . ."

The Tenant provided the invoice for this completed work, showing $1,050 for the work on March 11, 2021, and $533.70 for the timer, transformer, and light kit purchase the day prior.

The Landlord in the hearing stated they were not aware at the time of this repair. Their understanding was that repairs had to go through an approval process.

c. sudden increase in gas utility bill = $3,000

In the hearing, the Tenant provided they had to increase the heat capacity in the home due to doors that closed incorrectly. They referred to a gas utility statement that showed a $4,270 amount and stated they were "not sure they submitted this. . . this is a solid document . . . the Landlord can see it for themselves." This is another request they made to the Landlord that received no response; rather, the Landlord told them, in effect, "it's an old house, take it or leave it."

In response the Landlord in the hearing did re-state that it was an older home, and it was an unreasonable request to replace everything in the home to improve efficiency of heating. What the Tenant deemed "emergency" in each of their repair requests was not necessarily the case.

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, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant 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 all of 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.

a. rent reduction – half of yearly rent = $24,600

A tenant's right to quiet enjoyment is protected by s. 28 of the *Act*. This includes freedom from unreasonable interference. The *Residential Policy Guideline 6: Entitlement to Quiet Enjoyment* gives a statement of the policy intent of the legislation. This provides:

> A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Additionally, s. 32 of the *Act* sets out a landlord's obligation to repair and maintain residential property. This is in a state that "complies with the health, safety and housing standards required by law."

I find the Tenant's claim here is for their ongoing stress related to their dealings with the Landlord, both in terms of the Landlord's attempts to end the tenancy and the Tenant's ongoing requests for repairs.

The Tenant submitted this was "emotional damage" and "financial damage"; however, they have not submitted adequate evidence of this. The Tenant mentioned the impact this had on work, and on their need to stay with their family yet there was no specific information on this. I acknowledge the prospect of the tenancy ending can prove challenging; however, the Tenant did not present specific information on this in terms of dates, money spent, or opportunities sacrificed. Further, the Tenant engaged in the dispute resolution process to challenge each of the Landlord's attempts at ending the tenancy, and those decisions rectified the situation in each instance they presented where the Arbitrators delivered timely decisions in the Tenant's favour.

To award a complete reimbursement of rent for a set period of six months I would have to find the rental unit was essentially unlivable at that time. I find the unit was *not* unlivable for any period of time. There was no record of the Tenant seeking to accommodate themselves elsewhere during this time because of the lack of repairs based on their requests, or other feelings of harassment from their interactions with the Landlord. There is no record of confrontations or altercations with the Landlord; the Tenant did not submit any indication of correspondence that made that indication.

For a claim of this type, the onus is on the Tenant to prove their claim. I find they have not provided sufficient evidence to show the amount of stress they endured as a result of Landlord

action or inaction was a damage or loss to them. This is a claim of a serious nature and the Tenant has not provided sufficient evidence to justify an award for compensation.

b. unpaid invoice – pathway lightning = $1,583

Based on the evidence submitted, I find the Tenant did not mitigate their loss here. They listed this specific issue in their earlier hearing application of January 13, 2021. That issue was deferred and remained unresolved in the Arbitrator's decision of April 14, 2021. In the interim the Tenant proceeded with hiring the contractor on their own in March, and then expected to be reimbursed by the Landlord. I find the Tenant did not resolve the issue through dispute resolution.

Under s. 32, the Landlord must maintain the property in a state of repair that complies with health, safety, and housing standards. As per s. 62 of the *Act*, the dispute resolution process could allow an arbitrator to make any order necessary to give effect to the obligations of the Landlord in regard to s. 32 maintenance or repair. Instead, the Tenant forged ahead with fixing the lighting issue on their own, circumventing the dispute resolution process.

Further, in regard to s. 32, I am not satisfied of the priority of this repair, and the Tenant did not show conclusively that there was an issue of safety or security to them as a result of inadequate lighting on the driveway. They did not emphasize this concern using these terms in the messages to the Landlord that appear in their evidence.

I also find the repair, undertaken by the Tenant without the Landlord's approval, does not constitute an "emergency repair" for which the Tenant could properly be reimbursed under s. 33.

I find it unfair for the Landlord to pay for the repair at this stage based on the Tenant circumventing the process available to them in order to resolve the lighting issue. I find the Tenant made many requests to the Landlord, and by circumventing the Landlord's obligation to repair because of their impatience, they prevented the Landlord from prioritizing repairs or maintenance.

I find there was no violation of the *Act* or the tenancy agreement by the Landlord here; moreover, the Tenant did not mitigate their loss through dispute resolution. There is no reimbursement to the Tenant for this expense they bore entirely on their own.

c. sudden increase in gas utility bill = $3,000

The Tenant did not submit proof of this amount in their evidence. I find there is no record of the amount of this loss to them; therefore, I award no compensation for this amount. They described a $4,270 invoice in the hearing and that further obscures the value they put on this piece of their claim. There was no reference to dates or the need for increased heating capacity at certain times of the year, making this claim vague. Further, there is no evidence to show this amount, from the Tenant's description, arises from any breach of the *Act* or the tenancy agreement by the Landlord. I dismiss this portion of the Tenant's claim for this reason.

Conclusion

For the reasons above, I dismiss the Tenant's Application in its entirety, without leave to reapply. There is accordingly no reimbursement of the Application filing fee.

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: January 18, 2022

Residential Tenancy Branch