Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Casa Rental Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNRT, RP, PSF, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- a monetary order for the cost of emergency repairs;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law; and
- to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

During the hearing the landlord's agent indicated that the tenants had provided evidence but an incorrect Notice of Dispute Resolution Proceeding, which sets out the applications made by the tenants. A Notice of Dispute Resolution Proceeding was received but it was for a previous hearing. The landlord may have provided evidentiary material had the landlord known what the tenants' application consisted of, but was content with proceeding today and agreed that the landlord's agent could give viva voce evidence with respect to correspondence between the landlord's agent and the tenants as well as between the landlord's agent and the technicians.

Also, during the course of the hearing, the tenants withdrew the applications for an order that the landlord make repairs to the rental unit or property and for an order that

the landlord provide services or facilities required by the tenancy agreement or the law, and I dismiss those applications.

The landlord's agent also agreed that the tenants are entitled to recovery of the cost of emergency repairs in the amount of $738.61, as well as a filing fee of $100.00 that was ordered at a previous hearing. The landlord committed to sending $838.61 to the tenants by e-transfer the day of the hearing, and given that the tenants have already received a monetary order for the $100.00 filing fee, I grant a monetary order in the amount of $738.61 in favour of the tenants.

Issue(s) to be Decided

The issue remaining to be decided is:

- have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and by what amount?

Background and Evidence

The first tenant (CL) testified that this fixed-term tenancy began on June 1, 2020 which reverted to a month-to-month tenancy after the first 12 months, and the tenants still reside in the rental unit. Rent in the amount of $2,095.00 was payable on the 1st day of each month, which has been increased to $2,126.00 effective January 1, 2022, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $1,047.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment in a strata complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that on August 18, 2020 the tenants informed the landlord via email that there were problems with the air conditioning and heating unit. The landlord sent a repair person who said there was a leak in the cooling fluid in the AC/Heating system, and it was unlikely that it could be repaired, but could try. The person put a fluid in to plug the holes but said it would only last a few months. The tenants continued to notice problems, and a repair person attempted a repair in May, 2021. This time, water started leaking almost the minute that the repair person left. Water poured onto the floor and there was some water damage.

The tenants took video of the leaking and informed the landlord and were told that they had to contact the strata building management. The tenants disagreed that it was a

strata issue, but did so anyway. The strata sent a person who concluded that it was not a strata issue. No one else attended the rental unit.

The parties attended an arbitration hearing on August 17, 2021 and an order was made. A copy of the resulting Decision has been provided for this hearing showing that the tenants had applied for an order that the landlord make emergency repairs for health or safety reasons. The Arbitrator found that at that time, the landlord was in the process of replacing the heat pump, and ordered the landlord to continue with the efforts to replace it as soon as reasonably possible.

The next time a repair person arrived was on August 27, 2021, who said that they should have taken measurements previously, and the parts they had were not the right ones, and had problems getting parts. By then, the tenants had purchased the new unit, and the landlord had it installed on August 27, 2021.

The contract is for both heat and AC. The tenants suffered major problems for well over a year. The tenant estimates that for more than 30 nights, the tenants slept elsewhere, with friends or family; the rental unit was uninhabitable and the temperature was well over 33 c. The tenants had advised the landlord over and over with no replies.

The second tenant (BF) testified that the heat pump would stop working intermittently for the first year and rent was never held back. The tenants tried to be patient, but the landlord kept trying but wasn't getting any assistance from the owner. The owner wanted to repair it because replacing it was expensive.

In September, 2020 the first technician was late, exhausted, upset about being there and couldn't find anything wrong and said it was a user problem. He reset the circuit breaker and left. The next day the tenants came home to water everywhere. The tenants have provided a copy of an email sent to the landlord dated June 22, 2021 stating that during a flood, the tenants were stressed, ruined their towels, and the tenant was on hands and knees mopping up water and moving laundry appliances to avoid damage. It also states that the tenants had to have fans going all week to dry, and immediately took action as if it was the tenants' home.

The email also states that the tenants agreed to rent the rental unit on the basis that it had air conditioning, and it was "sweltering" nearly to the point of being unbearable for sleeping or working from home.

The tenants have also provided a copy of a receipt and an Invoice dated July 30, 2021 for a portable air conditioner costing $738.62.

The tenants were very uncomfortable, and it wasn't until the unit flooded, and the tenants were successful in obtaining a repair order from the Residential Tenancy Branch, that the repairs were done. As a result, the tenant feels that a claim for 6 months is more than fair and reasonable. The tenants didn't do anything to cause a problem, and it works now.

The landlord's agent testified that repairs were completed in a timely manner. Not once did any technician tell the landlord that the AC/Heating unit couldn't be repaired. The technician made appointments with the tenant when the unit flooded. Since the unit is not on the ground, the landlord contacted the strata because that had happened before in another unit.

The landlord called the strata on May 22, 2021 when the unit flooded, but on the 20th of May the technician was there who found nothing wrong. The strata confirmed that it was an owner issue.

The technician returned who advised that he could try a few things, but it went back and forth and had a hard time getting parts. The landlord's agent ended up putting the technician in touch with the tenants.

On June 23 the landlord received an email from the tenants saying that the technician had been in touch, and the tenants were going to California for a week. However the tenant was working from home that day and didn't have time to give the technician access that day. The email also requested that the landlord or another agent be present when contractors were there.

On June 25, 2021 the technician attended and said there was no point in repairing it, the unit needed replacing. The cost of $7,500.00 was approved by the owner on July 6, 2021, which was before the tenants' application for emergency repairs was heard. That is why the Decision states that the landlord is to continue with the repair, and on August 27, 2021 it was replaced. There was a heat wave, and that's how long it took until a contractor was able to install it. The landlord is not aware of the date, but received an email from the contractor, who was known to the landlord. The contractor knew it was an emergency and was fully aware of what was going on.

The unit was running, then stopped, then ran again. It wasn't until the flood on May 22 that it stopped working completely. From May 22 to August 27, 2021 the unit wasn't working, but it was repaired intermittently and the technician said there was nothing wrong with the unit.

Analysis

Firstly, any award made in favour of the tenants cannot serve as a punishment against the landlord. In fact, the *Residential Tenancy Act* does not permit me to make any monetary orders to punish any party. The issue is whether or not the tenancy has been devalued; whether or not the tenants are getting what they have paid for.

In order to be successful, the tenants bear the onus of establishing that they suffered a loss, that the loss was suffered as a result of the landlord's failure to comply with the *Act,* regulation or tenancy agreement, the amount of such loss and what efforts the tenants made to mitigate any loss suffered.

I have reviewed all of the evidentiary material, and I find that the tenants mitigated by contacting the landlord on several occasions, purchased a portable AC unit, and made an Application for Dispute Resolution seeking an order that the landlord make emergency repairs.

One of the emails that the tenants sent to the landlord stated that the tenants would not have rented if air conditioning wasn't provided. The landlord did not dispute that, and I find that AC was a material term of the tenancy agreement. I am also satisfied that the tenants suffered a loss and that the loss was suffered by the landlord's failure to ensure that it remained functional.

With respect to the amount, the tenants claim $1,000.00 per month for each of 6 months, for a total of $6,000.00, which is almost half of the rent. The rent payable during the subject time period was $2,095.00 per month. One of the tenants estimated that for in excess of 30 nights the tenants had to stay elsewhere overnight due to discomfort and unbearable heat during the summer heat wave. Certainly the tenancy had been devalued by $2,095.00 for 1 month.

However, the parties agree that the AC/Heating system didn't work at all between May 22, 2021 to August 27, 2021, which is more than 3 months. The parties also agree that the tenants contacted the landlord on August 18, 2020 reporting that it wasn't working. The parties also agree that the unit worked intermittently from August 18, 2020 to May 22, 2021, which is about 9 months. The owner approved the replacement on July 6, 2021. It should not have taken a full year to rectify and make the repair, and I find that the landlord didn't act responsibly until the flooding occurred.

Considering the testimony of the parties and the evidence provided, and having found that the AC unit was a material term of the tenancy agreement, I find that the tenants have established the claim.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the $100.00 filing fee.

In summary, I find that the tenants have established claims of $738.62 for the purchase of an AC unit; $6,000.00 for damages and $100.00 as recovery of the filing fee, for a total of $6,838.62. I grant a monetary order in favour of the tenants in that amount and I order that the tenants may reduce rent for future months until that sum is realized, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenants' applications for an order that the landlord make repairs to the rental unit or property and for an order that the landlord provide services or facilities required by the tenancy agreement or the law are hereby dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $6,838.62, and I order that the tenants be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it.

This order is final and binding and may be enforced.

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: January 10, 2022

Residential Tenancy Branch