Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, OLC, MNDCT, RR, PSF, LRE, MNRT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the "*Act*"):

- An order under s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement;
- An order under s 65 for a reduction in rent for repairs, services, or facilities agreed upon but not provided;
- An order under s. 65 that the Landlord provide services or facilities required by the tenancy agreement or law;
- A monetary order under s. 67 for repayment of costs paid by the Tenant for emergency repairs;
- A monetary order under s. 67 for compensation or monetary loss;
- An order under s. 70 restricting the Landlord's right of entry; and
- An order under s. 72 for return of their filing fee.

C.N. and C.N. appeared as Tenants. H.N. and L.N. appeared as Landlords.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

The Tenants indicate that they served the Notice of Dispute Resolution by way of registered mail sent on September 28, 2021. The Landlords acknowledges receipt of the Notice of Dispute Resolution. I find that the Notice of Dispute Resolution was served in accordance with s. 89 of the *Act*. Pursuant to s. 90, I deem that the Landlords received the Tenants' Notice of Dispute Resolution on October 3, 2021.

The Tenants indicate that they served their evidence on the Landlords in three separate packages, on January 12, 26, and 31, 2022. Though the Landlords acknowledge receipt, they object to the late evidence of January 26 and 31. Pursuant to Rule 3.14 of the Rules of Procedure, applicant's must serve their evidence at least 14-days before the hearing. The Tenants indicate the late evidence comprised of photographs. They were unable to demonstrate that it was admissible on the basis of Rule 3.17 in that the photographs as the photographs were not new as contemplated by that rule. I find that the Tenant's evidence package of January 12, 2022 was sufficiently served on the Landlords pursuant to s. 71(2) of the *Act* by virtue of its acknowledged receipt. The Tenants' late evidence of January 26th and 31st were not admitted into evidence.

The Landlords indicate that they served their evidence on the Tenants on January 17, 24, and 28, 2022. The Tenants acknowledge receipt of the Landlord's evidence on January 26, 2022. Similarly, the Landlords failed to serve the evidence of January 28, 2021 within the proscribed timelines set out in the Rules of Procedure, which in the case of application respondents is 7 days before the hearing as per Rule 3.15. The Landlords say the evidence comprised of a letter dated January 21, 2022. The Landlord was unable to demonstrate why it was not served on time or whether Rule 3.17 applied. Accordingly, I find that the Landlords' evidence of January 17 and 24 was sufficiently served on the Tenants pursuant to s. 71(2) of the *Act* by virtue of its acknowledged receipt. The Landlords' late evidence of January 28th was not admitted into evidence.

Issue(s) to be Decided

1) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement?
2) Should the Landlords right of entry be restricted?
3) Should the Landlord be ordered to provide services?
4) Are the Tenants entitled to a monetary claim?
5) Should the Tenants rent be reduced?
6) Are the Tenants' entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenancy began on October 15, 2020; and
- Rent of $1,500.00 and a fee of $150.00 for rental of the garage is due on the first day of each month.

The Tenants say they paid a security deposit of $825.00, the Landlord says the security deposit is $750.00. The written tenancy agreement put into evidence by the Tenants indicates an security deposit of $750.00. This point of disagreement is not relevant to the present dispute.

The residential property comprises of two rental units, one upstairs and the basement rented by the Tenants. Both units have their own meter.

The Tenants say there have been several issues with the rental unit's electrical since the tenancy began. They indicate that from October 15, 2020 to November 1, 2020 they had no electricity at all. Once the electrical was working, they say that their usage has been excessive. The Tenants' further state that the rental unit is older and does not have good windows or insulation.

The Landlord says that the accounts are under the Tenants name and that the gap in usage is from their delay in setting up their account with BC Hydro. The Tenants say they set up their account on October 15, 2021. No documentary evidence was submitted on this point.

According to the Tenants, they say that there are several code violations with respect to the electrical, some which they say is crossed with the upper unit, thus usage from the upper unit is reflected on their electrical bill. An electrical inspection dated November 12, 2020 indicate various code issues with the electrical.

The Tenants say they had filed an application in early 2021 with respect to the electrical issues but did not proceed with the hearing after the Landlord agreed to fix the electrical. The Tenants say the issues have not been addressed.

The Landlord denies that the electrical has not been fixed, saying that it had been fixed as of November 30, 2020. Conversely, the Landlord submits into evidence a letter dated January 8, 2022 from an electrician saying that a permit had been pulled to fix the electrical issues, which would indicate that the issues are ongoing. The letter confirms that the heating circuits for the upper and lower rental units are not mixed between the

two meters. However, during the hearing the Landlord says that there are some mixed circuits but that some of the circuits for the upstairs unit were one the basement meter and vice versa.

The Tenants further indicate that the rental unit was rented to them as a three-bedroom unit and provide a copy of the ad listing from the fall of 2020 showing the rental unit as a three-bedroom. The Tenants say that the fire department conducted an inspection of the rental unit and said that one of the rooms could not be used as a bedroom as it had no secondary egress through a window. The Tenants further stated that the fire department conducted a second inspection on December 3, 2020 to ensure that the third room was not being used as a bedroom. The Tenants say they have been sleeping on the couch for the past 16-months.

The Landlord acknowledges that the advertisement for the rental unit was in error and should not have listed the space as a three-bedroom unit. The Landlord further states that he told the Tenants during their initial viewing of the rental unit that the third room could be used as storage and that the rental unit was a two-bedroom unit.

The Tenants indicate that the Landlord has been entering their rental unit in contravention of the notice requirements under the *Act*.

There was disagreement between the parties on the extent of the rental unit. All agreed that there is a small room that exits to the outside. The small room has three doors, with the door to the left going to the main part of the basement rental unit, the door to the right going to the garage, and a door straight ahead going to utility room with the electrical panels and hot water tanks for both rental units.

The Tenant says that the only lock for the rental unit is on the exterior door leading into the small room. The Landlord says the door to the left leading into the main area of the rental unit has a lock and that the small room is not part of the rental unit. The Landlord further says that access to the electrical services for both rental units is only possible through the small room, which the Landlord says is common space.

The parties do not submit photographs of this, however, the advertisement for the rental unit shows the rental unit doorway. The photograph is taken from the main area of the rental unit and looks out from the door into the small room, with the door leading from the small room into the main area being wedged open.

The Tenants also say that they undertook some repairs to the small room, including painting the walls and putting in vinyl flooring. The Tenants say that they had an agreement with the Landlord to repair this space and that the Landlord agreed to repay the costs of these repairs. The Tenants submit receipts of this.

The Landlord denies any such agreement, that the work was unauthorized, and says that the Tenants have essentially converted common space into their personal rental unit.

Neither party submits correspondence during the time the repairs were undertaken evidencing an agreement or otherwise. The Tenants do not submit evidence of written demand to the Landlord for payment of the repairs.

The Tenants indicate that they are expected to cut the grass for a 2.5 acre lot, which they say is excessive. The Landlord says that the two units share the yard and that he gave the option of one rental unit to have the front and the other the back. The Landlord indicates it is his expectation that the renters will maintain their respective areas of the yard.

Analysis

The Tenant seeks various relief under the *Act*.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenants' claim for monetary compensation is nebulous. In their Notice of Dispute Resolution, the Tenants claim $5,000.00 for their compensation claim with respect to losses they say they sustained. Review of the evidence provided by the Tenant and their submissions during the hearing do not make clear how this number was arrived at. No monetary order worksheet or detailed calculation of the monetary claim was provided by the Tenant, this despite Rule 2.5 of the Rules of Procedure.

Further, the Tenant's claim for compensation appears to be related to what they say are excessive bills for the rental unit's monthly electrical. However, no utility bills were put into evidence. Also, even if there was clear evidence that the basement meter was being charged for electrical consumption from the upper unit, it's difficult to determine what the value of that would be. The Landlord acknowledges some crossed circuits such that usage on the upper floor is reflected on the basement's meter and vice versa. What this means in practice, however, is unclear based on the parties' evidence. Indeed, by the Tenants' own admission, the windows and insulation are older, which may explain why electrical heating costs are high.

It is the Tenants' application and, as such, it is their burden to show that the Landlord's breach of the tenancy agreement or the *Act* resulted in a quantifiable amount of damages. In the present circumstances and without making findings on the other points of the four-part test, I find that the Tenants have failed to quantify their claim. Accordingly, the Tenants' claim for monetary compensation is dismissed without leave to reapply.

With respect to the Tenants' compensation claim that electricity was not connected from October 15, 2020 to November 1, 2020, I have no evidence upon which to make that finding. The Tenants say they had no electricity. The Landlord provides a plausible explanation that the Tenants had failed to set up their account with BC Hydro. Under the tenancy agreement, the Tenants are responsible for electricity, including setting up their account. The Tenants provide no evidence to show when their electrical account was set up or that the Landlord is in breach of the *Act*, regulations, and/or the tenancy agreement with respect to the alleged gap in electrical service from October 15 to November 1. Accordingly, this portion of the Tenants' claim is also dismissed without leave to reapply.

The second aspect of the Tenants' application deals with compensation for emergency repairs. Again, without a monetary order worksheet, it is difficult to quantify this amount. However, the Tenants' application lists an amount of $500.00 to $1000.00 under this

portion of the Tenants' claim. I note s. 33(3) of the *Act* sets out a procedure that is to be followed with respect to compensation for emergency repairs, namely that the Tenant has made two attempts over the telephone with respect to the emergency repairs and that Tenant undertook those repairs after waiting a reasonable period.

Here, the Tenants claims for compensation with respect to emergency repairs appears to relate to painting and other work completed by the Tenants. These are not an emergency repairs as contemplated by s. 33(1) of the *Act*. I find that painting walls, repairing drywall, and replacing floors are not emergency repairs as contemplated by s. 33(1) of the *Act*. Such repair work is not urgent, is not necessary for the health and safety of anyone or for the preservation of the residential property, and is not listed under s. 33(1)(c). Further, it does not appear that the procedure listed under s. 33(3) has been followed. The Tenant made no submissions with respect to requests to the Landlord to repair the floor, paint, or drywall. Accordingly, this aspect of the Tenant's claim is also dismissed without leave to reapply.

The Tenants seek that the Landlord provide services agreed upon but not provided. In the Tenants' application, it lists that the Tenant cuts the grass for the residential property. I note that the tenancy agreement is silent with respect to either parties' responsibility with respect to mowing the lawn. The Tenant says he cuts several acres of grass. The Landlord says that the Tenants are responsible for the portion of the lawn they use while the other rental unit maintains the other portion.

Policy Guideline 1 states the following with respect to expectations of lawn maintenance for tenancies:

> 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
>
> 4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
>
> …

6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

The residential property is a single-family home with two rental units, one upper and the other lower. Based upon Policy Guideline 1 and the tenancy agreement's silence on the point of lawn maintenance, I find that it is the Tenant's responsibility to cut the grass. Accordingly, this portion of the Tenant's claim is also dismissed without leave to reapply.

The Tenants make a claim for reduced rent on the basis that the rental unit, which they say was advertised as a three-bedroom, was in fact a two-bedroom as per the local fire code after it being inspected by the fire department. I have reviewed the advertisement for the rental unit, which showed clearly that it was listed as a three-bedroom. The Landlord says that the advertisement is in error and that he told the Tenants the third room was not fit for occupation during the initial viewing. I do not believe the Landlord. I accept the Tenants' evidence that it was advertised as a three-bedroom rental based on the advertisement. The advertisement lists that the unit is a three-bedroom in two separate locations and that the unit is a legal suite.

Section 65 of the *Act*, the applicable section for rent reduction claims, states the following:

> **65** (1) Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:
> …
> (f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

The important point is that in order to grant a rent reduction claim, I must make a finding that the Landlord has not complied with the *Act*, regulations, or tenancy agreement.

The difficulty I have with the Tenants' claim is that they inspected the rental unit before signing the tenancy agreement. The Tenants have been living in the rental unit since October 2020, with the legality of the third room coming to light in December 2020. I accept that the Landlord's advertisement is misleading. However, the Tenants bear

some responsibility in accepting the rental unit as it was after inspecting it. The tenancy agreement put into evidence does not specify how many bedrooms are part of the rental unit. Further, there is a level of acquiescence on the part of the Tenants, who have continued to occupy the rental unit since discovering the third room did not comply with the fire code.

I find that the Tenants originally contracted with the Landlord for a three-bedroom rental unit. I further find that the Tenants acquiesced to the loss of the third bedroom through their conduct, specifically their continued occupation of the rental unit since discovering the third room was not a legal bedroom. The terms of the original contract, which was for a three-bedroom rental unit, have been altered by the parties' conduct to a two-bedroom rental. Accordingly, I find that the Tenants have established a rent reduction claim for three months, being the period from October to December 2020.

The Tenant's argue that the rent be reduced by 1/3, or $500.00, over the relevant period. I do not believe this accurately reflects the loss as the Tenants did not lose the floor space, which still has some utility as a storage room or office. I find that an appropriate reduction is $200.00 for each of the three months, or a total rent reduction of $600.00.

The next aspects of the Tenants' claim are interrelated, specifically the Landlord's right of entry and the order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement. The issue appears to be that the parties are not clear on what constitutes the rental unit. The Tenant says that the exterior door to the small entry room is the boundary of their rental unit. The Landlord says it's the door that leads to the main part of the rental unit.

No photographs were put into evidence by the parties, except for the photograph in the advertisement provided by the Tenants. In that photograph, the door leading out into the small room is open with a wedge keeping the door open. The rental unit comprises the area in which the Tenant has exclusive possession. I find that the Tenants description is more plausible than the Landlord's given that one would expect the exterior door to have a lock. I accept the Tenants' evidence that the lock is located on the exterior door leading into the small room, which is reinforced by the photograph in the advertisement showing that the doorway from the main area of the rental unit to the small room was left open with a door wedge.

I accept that the electrical services and the hot water tank for both rental units are located off the small room, as this point is not in dispute between the parties. I further find that the layout of the rental unit makes it likely that the Landlord has entered the rental unit to access the utility room, as one might expect given that the services for both rental units are located there.

The Landlord's right of entry into a rental unit is restricted by s. 29 of the *Act*. I find that the Landlord has not complied with his right to enter the rental unit as set out by s. 29. Accordingly, I order that the Landlord comply with s. 29 of the *Act* regarding access to the rental unit. To be clear, the Tenants do not have a veto on when the Landlord can enter the rental unit given that there may be bona fide reasons for doing so to access the utility room. However, the Landlord must comply with s. 29, specifically the 24-hour notice provision set out by s. 29(1)(b).

Conclusion

The Tenants claims for monetary compensation, compensation for emergency repairs, and that the Landlord provide services are dismissed without leave to reapply.

The Tenants' claim for rent reduction is permitted in part and I am satisfied that the Tenant has established a total claim for rent reduction of $600.00, which I grant pursuant to s. 65(1)(f) of the *Act*.

I further find that the Landlord has not complied with s. 29 of the *Act*, which restricts the Landlord's right of entry into the rental unit. I order pursuant to s. 62 of the *Act* that the Landlord comply with s. 29 of the *Act* governing the Landlord's right of entry into the rental unit.

As the Tenant was partially successful in their application, I find that they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenants' filing fee.

I exercise my discretion under s. 72(2) of the *Act* and direct that the Tenants withhold **$700.00** from rent on **one occasion** in full satisfaction of their rent reduction claim and for the return of their filing fee.

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: February 07, 2022

Residential Tenancy Branch