



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capilano Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, RP, OLC, FFT**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant NM attended the hearing and the landlord was represented by property managers, BB and EW. As both parties were present, service of documents was confirmed. The landlord confirmed service of the tenant's Notice of Dispute Resolution Proceedings package and stated he had no concerns with timely service of documents. The tenant denies being served with the landlord's evidence package.

The landlord testified that he served each individual tenant with their own copy of the evidence by registered mail on March 1st, 2022 and provided tracking numbers for each of the packages sent. The packages were sent to the tenants at their residential addresses and the tracking numbers are recorded on the cover page of this decision. During the hearing, the landlord went to Canada Post's website and advised me that each tenant was left with a notice card on March 3rd at 10:34 a.m.; the packages were available for pickup; and that the status remains the same today.

I deem the landlord's evidence package served upon each of the tenants five days after they were sent, or March 6, 2022 in accordance with sections 88 and 90 of the Act. The

landlord's documentary evidence was admitted into evidence as was the tenant's evidence package.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue

At the commencement of the hearing, the tenant advised me that the primary issue of not having running cold water has been sufficiently rectified by the landlord and that she no longer seeks an order for repairs or an order that the landlord comply with the Act. As a result of the tenant's advisory, I dismiss the tenant's application seeking an order for repairs and an order that the landlord comply with the Act.

The tenant still seeks the order for a rent reduction, for the 18 months she claims the landlord did not provide cold water to her unit. Although the claim was presented as a rent reduction, the tenant seeks compensation from the landlord at 18 times the full amount of rent paid to the landlord. I treated the tenant's application as an application for a monetary order and not as an application for a rent reduction for this hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation for being without cold water?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The fixed one year tenancy began on March 1, 2020 with rent set at \$1,350.00 per month, becoming month to month at the end of the fixed term. A security deposit of \$675.00 was collected by the landlord which the landlord continues to hold.

The rental unit is the first one the tenants ever lived in since moving to Canada. When they moved in, there were issues with having cold water in the winter. The tenants were unsure whether the supply of cold water throughout the house was weak. When doing dishes, taking a shower or washing hands, the water would come out steaming hot. If the tenant turned on just the cold water, it would come out as a drip, not like the hot water supply which was much stronger. As evidence, the tenant supplied a video of hot water coming out of the taps without any cold water coming out at.

Sometimes, the tenant would burn her hands on the hot water and her daughter suffered from burned hands as well. The co-tenant was delayed in going to work, waiting for the water in the shower to cool down. The tenant also missed events because she was unable to wash the hair colour out of her hair due to the water issue. It was a huge convenience most of the time, but it wasn't a consistent problem. The tenant testified that the issue of not having cold water was exacerbated during the hot summer of 2021. The tenant is clear that the issue is not a lack of cold water whatsoever, but that *"The cold water supply has been consistently, erratic"*.

Each time she sent a complaint to the property manager, a "handyman" would come take a look at the issue. According to the tenant, the landlord kept sending handymen, never a professional plumber. Every time, it was a repeated cycle: notify the landlord, handyman takes a look and can't solve it and says he needs to have someone else take a look. There was never a solution to the problem.

For 18 months, the tenant complained and finally they have fixed the problem. It took almost a year before a professional would take care of it. The tenant questions why the landlord did nothing about the issue until 2021 when they knew about it since 2020 and the property manager acknowledged the issue.

The tenant seeks to be compensated with 18 months rent at \$1,350.00 per month for a total of \$24,300.00. In their written statement, the tenants state,

“We demand complete rental reversal plus penalty for failing to provide basic necessities, causing mental harassment/trauma, that too knowing the situation and ignoring it intentionally, all this even after paying all the dues on time.”

The landlord gave the following testimony. The issue of the tenant's cold water supply was taken seriously and the landlord spent money and time trying to determine the issue for the tenant.

The landlord provided a timeline of investigations and repairs done to the tenant's unit regarding the cold water issue:

- April 19, 2021: a mechanical/electrical contractor commences boiler repairs and inspect unit 305 water pressure. They find the unit has adequate water supply.
- May 13, 2021: the landlord's own maintenance technician checked the unit and found it has cold water at 2:25 p.m.
- June 14, 2021: the landlord's maintenance technician checked the complaint of low pressure and reports the unit has cold water. The kitchen faucet cartridge is checked for blockage.
- June 29, 2021: a heating plumbing service reports that the tenant's unit is checked for cold water and confirms the unit has cold water.
- The landlord emailed the plumbing service on June 30th, for confirmation of the cold water issue being fixed and the plumbing service reported back by email on July 1, 2021 stating *“When we completed the upgrades suggested by me [tenant's unit] has cold water, It was working perfectly.”*
- July 6 2021: same heating/plumbing service reports that the tenant's unit is being supplied with cold water after being called to investigate.

The landlord testified that as part of preventative maintenance being done on the building, he had a plumber cut a “T” into the cold-water supply and run a 100-foot large-diameter PEX pipe to supply water from the first floor all the way to the second and the third floor on December 15, 2021. The landlord testified that it took a single day for the upgrade to be done, however the tenant disputes this.

On December 29, 2021, the tenant's unit was checked by a plumber who determined the unit has cold water. The tenant has not complained of the lack of cold water since the installation of the new pipe.

The landlord argues that the unit below the tenant's had any issues with low cold-water pressure, nor did any other unit in neighbouring units on the third floor. He has done his best, spending lots of time and money on the complaint and each time the investigation finds there are no issues with low cold-water pressure.

The landlord argues that the tenant's video of the kitchen water tap showing no cold water coming out is easy to create – all the tenant had to do was turn off the cold water supply to the tap for the video.

The tenant rebuts the landlord's testimony, arguing that she never said it was an issue of a complete lack of cold water but that it was an on and off issue. She couldn't promise that when the plumber comes to investigate that the issue would be there. The tenant argues that the onsite property manager was aware of the issue and saw the problem. The tenant questions why others couldn't see it when the onsite property manager could.

Analysis

Section 7 of the Act states: 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. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or 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; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

In this case, the tenant argues that the landlord failed to provide basic necessities, causing mental harassment and trauma to the tenants by being aware of the root cause of the problem (intermittent lack of cold water) and intentionally ignoring it. Although it was not specifically stated by the tenant, it appears the tenant is implying that the landlord has breached section 32 of the Act. That section states:

Landlord and tenant obligations to repair and maintain

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.

As stated above, the onus to prove their case falls upon the tenant. While the evidence of the tenant's video clearly shows no water coming from the cold water tap in the kitchen and abundant hot water coming from the hot water tap, I am not satisfied it depicts a complete absence of cold water. It is possible, as the landlord argues, that the easily accessible supply of cold water may have been shut off for the video recording by the tenant. No other recordings of the bathrooms or bath/shower were presented as evidence by the tenant. I find the video recording supplied by the tenant lacks credibility.

Second, I must give attention to the multiple reports submitted by the landlord's tradespeople and plumbers who all advise that there is no issue with sufficient cold-water supply to the tenant's unit. I find the plumber's email dated July 1, 2021, particularly compelling when he states the tenant's cold water was working perfectly on that date. I find the landlord made multiple attempts at trying to remedy the tenant's concerns of no cold water at considerable expense and time. Each time, the contractors hired by the landlord or the landlord's own "handymen" found sufficient cold water was being supplied to the tenant's unit. On a balance of probabilities, I do not find the landlord has breached section 32 of the Act by not providing cold water to the tenant. (Point 1 of the 4-point test)

The tenant seeks to have the entire amount of rent paid from the time she first started complaining of a lack of cold water until the time of filing for dispute resolution, a period of 18 months. The tenant testified that during this time, there wasn't a complete absence of cold water, just intermittent disturbances to her lifestyle. Example of this being: not being able to attend events due to not being able to wash out her hair colour; or by the co-tenant being unable to take timely showers. I find, however, the tenant did not provide any details on how she arrived at 100% reversal of rent for the perceived inconveniences. Even if the tenant, her daughter or the co-tenant were burned by hot water (which was not substantiated with medical documents), the tenant did not supply any means by which I could assess the damages she seeks. No similar cases whereby a tenant was awarded 100% reversal of rent was provided and no scale to show the value of the perceived damage was supplied. If the tenant had been successful in proving the existence of a breach of the Act by the landlord, the tenant has not been able to show why she should be compensated with over \$24,000.00 as damages. I find the tenant has provided insufficient evidence to establish the value of the damage or loss (point 3 of the 4-point test).

For these reasons, I dismiss the tenant's claim seeking compensation without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The application is dismissed without leave to reapply.

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: March 14, 2022

Residential Tenancy Branch