Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-4M, MNDCT, RR, RP, OLC, FFT**

Introduction

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

1. Cancellation of the Landlord's Four Month Notice to End Tenancy For Demolition or Conversion of a Rental Unit (the "Four Month Notice") pursuant to Sections 49 and 62 of the Act;
2. An Order for compensation for the Tenants' monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order for repairs to the unit, the Landlord was contacted in writing to make repairs but they have not been completed pursuant to Section 32 of the Act;
4. An Order for a rent reduction for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act;
5. An Order for the Landlord to comply with the Act, Residential Tenancy Regulation (the "Regulation") and tenancy agreement pursuant to Section 62(3) of the Act; and,
6. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, HA, and Legal Counsel, SS, and the Tenants, CV and DV, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Tenants confirmed that they personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on November 23, 2021 (the "NoDRP package"). The Landlord does not dispute receiving the NoDRP package from the Tenants. I find that the Tenants served the Landlord with the NoDRP package on November 23, 2021, in accordance with Section 89(1)(a) of the Act.

The Tenants confirmed that they personally served the Landlord with their evidence on December 13, 2021. The Landlord confirmed receipt of the Tenants evidence on December 13, 2021. I find that the Landlord was served with the Tenants' evidence on December 13, 2021, in accordance with Section 88(a) of the Act.

Preliminary Matter

The Landlord did not formally serve a Four Months' Notice on the Tenants. Instead it was just text message conversations containing an informal proposal about vacating the suite for a possible renovation of the rental unit. The Tenants agreed that they did not receive a formal notice to end tenancy from the Landlord. The Tenants agree that this part of the Tenants' claims is dismissed.

Issues to be Decided

1. Are the Tenants entitled to an Order for compensation for the Tenants' monetary loss or other money owed?
2. Are the Tenants entitled to an Order for repairs to the unit?
3. Are the Tenants entitled to an Order for a rent reduction for repairs, services or facilities?
4. Are the Tenants entitled to an Order for the Landlord to comply with the Act, Regulation and tenancy agreement?
5. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2013. The fixed term ended on April 30, 2014, and the tenancy continued on a month to month basis. Monthly rent is $2,195.00 payable on the first day of each month. A security deposit of $1,000.00 was collected at the start of the tenancy and is still held by the Landlord.

The Tenants feel their right to quiet enjoyment has been breached by the Landlord. They testified to the following events:

> February 18, 2021, the Tenants complained about water dripping from the faucet. The Landlord's Agent's affidavit reported this leaking faucet occurring on January 18, 2021 when he did an inspection in the rental unit.
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> The Tenants testified that the garburator stopped working. The Tenants state it, '*just shut off*'. February 24, 2021, the Landlord's Agent said he was well enough to come and check out the situation in the Tenants' unit. The next day, the Landlord's Agent went to the unit after the Tenants replied. The Landlord's Agent inspected the garburator and found three large pieces of lemon inside the garburator. He stated the large lemon items were stuck inside the garburator and caused the breaker to trip. He reset the breaker and asked the Tenants to thrown large food items into the compost bin.
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> On August 18, 2021, the Tenants texted the Landlord's Agent about a leaking toilet. August 19, 2021, the Landlord was able to bring a plumber to assess the leaking toilet. On August 31, 2021, the Tenants and the downstairs tenant in the suite below determined that the leak had not been completely repaired. On September 8, 2021, a plumber was sent to the Tenants' unit to fix the leak. It was completely fixed on this date.
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> A letter dated August 26, 2021 from the Senior Strata Manager about an 'Alleged Bylaw Violation – Possible Fine' stating '*a resident associated with your Strata Lot was smoking inside the unit on July 6, 2021 at approximately 5:30 p.m.*' The Tenants were given a 14 day window to provide a written answer to the complaint or request a hearing at a strata council meeting. According to text messages between the Landlord's Agent and the Tenants, it looks like the Tenants received the complaint by email on September 9, 2021. The Landlord's Agent encouraged them to respond quickly, he said, "*Response must come from you. No response they'll fine you. No need to prove it to me.*"

On September 9, 2021, the Tenants responded to the strata council stating that the council had breached their privacy and quiet and peaceful enjoyment of their rental unit. The Tenants state in their letter they have been accused of smoking marijuana. They affirm flat out that they do not smoke anything. These Tenants feel like, during a fire system inspection, that the people who entered their suite were 'inspecting' more than what the notice claimed.

The Landlord's Agent testified that he has been diligent in responding to the Tenants' complaints about needed repairs in their rental unit. He lists the following repairs with corresponding invoices that were done to the Tenants' rental unit:

- Invoice 15001935 dated October 16, 2020, from Power Vac [Complete Dryer Ventilation System cleaning, Technicians replaced 6' of aluminum flex hose] in the amount of $236.25;
- Invoice 40175 dated September 8, 2021, from Slopeside Mechanical Systems [Toilet leaking from wax seal, removed toilet, replaced wax seal, not leaking anymore in the below unit] in the amount of $234.80;
- Invoice A-0152C dated October 10, 2021, from Art Prosser [repair ceiling in below unit from toilet leak, prime and painted, replaced ceiling fan which shorted out] in the amount of $521.63;
- Invoice 40937 dated January 31, 2022, from Slopeside Mechanical Systems [replaced two shower cartridges for master bathroom and main bathroom, replaced spool in master bathroom, leaking stopped] in the amount of $557.11

The Tenants testified that their living situation in the residential property has been stressful due to 'things' that should not have happened. They are entitled to quiet enjoyment of their rental unit. The Tenants said they had to talk to a lawyer about the smoking in their unit accusation. CV had to take time out of certain activities in his life.

The Landlord submits that the leaks in and from the Tenants rental unit were an inconvenience, but he made every effort to complete the repairs. The repairs have all been completed and there are no repairs that are outstanding from the Tenants' rental unit.

Analysis

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.

RTB Policy Guideline #6 assists parties to understand issues that are likely to be relevant in a breach of quiet enjoyment claim. The basis for a finding of a breach of quiet enjoyment is set out in the guideline as:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. 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.*
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> *Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*
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> *In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*
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> *A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.*

The Tenants feel like life in the rental unit through the period where repairs were needed has been stressful. The accusation that someone was smoking in their rental unit was, for them, offensive as neither Tenant smokes. This strata council complaint has left a bitter taste in their mouths. I find, though, that the repairs attended to by the Landlord's Agent have been inconvenient for the Tenants. Even repairing a drip in the bathroom faucets, although not excessive, the noise was bothersome to the Tenants. The Landlord's Agent got the repairs done. The bigger leak from the faulty wax ring below the Tenants' toilet took some time to get completed, but the Landlord's Agent stayed on it until it was repaired.

I find that the Landlord's Agent has been diligent in attending to repairs in the Tenants' rental unit. On a balance of probabilities, the repairs required were temporary inconveniences, and I find do not constitute a breach of the entitlement to quiet enjoyment of the rental unit for the Tenants. Sometimes repairs take time as specialized labour is required, and fixes need time to settle to see if they have been resolved. I find that the Tenants' repairs were all addressed in a timely manner, and that the Landlord's Agent has met his obligations as set out in Section 32(1) of the Act. The Landlord's Agent has conducted himself in a manner appropriate to the situations that the Tenants were experiencing, and all the Tenants' repairs have been addressed. I dismiss the Tenants' claim for an Order of repairs, for a rent reduction for repairs, services or facilities, and for an Order that the Landlord comply with the Act, Regulation or tenancy agreement.

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline 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.*"

Policy Guideline #16 asks me to analyze whether:

- 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.

The Tenants have not pointed me to a Section of the Act of which the Landlord has breached. I do not find that the Tenants' right to quiet enjoyment was breached as the disturbances were not unreasonable and were diligently addressed by the Landlord's Agent. I also find that the Landlord's Agent has met his Section 32(1) obligations. As breaching the Act, Regulation or tenancy agreement provisions is the first part of the tests that must be met, I find the Tenants have not proven this part of their claim. Accordingly, I find that the Tenants are not entitled to an award of monetary compensation.

As the Tenants were not successful in their claims, I do not grant them recovery of the application filing fee.

Conclusion

The Tenants' claims are dismissed in entirety without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 15, 2022

Residential Tenancy Branch