Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Penticton Realty and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, OLC, LRE

Introduction

The Tenant filed an Application for Dispute Resolution on January 26, 2022 seeking:

- repairs to the rental unit after contacting the Landlord in writing
- reduction in rent for repairs not provided
- suspension/set conditions on the Landlord's right to enter
- the Landlord's compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on April 29, 2022**.**

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The Tenant and agent of the Landlord (the "Landlord") attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The Landlord confirmed disclosure of digital photos from the Tenant; however, they had to contact the Residential Tenancy Branch to verify hearing details, based on an incomplete Notice of Dispute Resolution left in a package at their workplace. The Landlord provided their material paper copies to the Tenant by taping an envelope to the door of the rental unit; the Tenant confirmed they received the Landlord's materials in this way.

Issues to be Decided

a. Is the Landlord obligated to make repairs to the rental unit where the Tenant previously contacted them in writing?

b. Is the Tenant eligible for a reduction in rent for repairs agreed upon, but not provided?

c. Is the Tenant eligible for a suspension or set conditions on the Landlord's right to enter the rental unit?

d. Is the Landlord obligated to comply with the *Act*, the regulations, and/or the tenancy agreement?

Background and Evidence

The parties confirmed the basic details of the tenancy agreement in place since 2013. Subject to a standard rent increase, the current amount of rent paid since January 2022 is $682.08.

At point #8, the agreement sets out that "Tenant agrees and consents to entry by the Landlord into the premises, upon receiving notification of defects and damages in writing, for the purpose of inspecting the said defects and damages. Entry is subject to Section 28 of the Act.

The Tenant stated that quarterly inspections by the Landlord are not set out in the tenancy agreement.

a. repairs in the rental unit

On their Application, the Tenant noted specifically the non-repair of a fan in the bathroom. They set out that they informed the Landlord of this on their first discussion. Additionally, the past landlords were aware of the issue and did not make that repair. This has led to a persistent mould problem within the unit. The Tenant provided photos to show this. The Tenant also provided a record of their emails to the Landlord asking about this problem.

The Landlord responded to this by stating the fan replacement was replaced on April 8, prior to this hearing. The Tenant confirmed this repair took place, within a timeframe of two hours total for the completed job. The Tenant noted they "won" the issue of fan repair through a prior dispute resolution process in August 2018. They posited in the hearing that the Landlord completed the job now because of this current dispute resolution proceeding.

The Landlord acknowledged that there was a situation where the Tenant had to deal with different managers in the past. They also acknowledged this issue was brought to their attention for the first time with this current Notice of Dispute Resolution. The Tenant's request for a fan may have been messaged to the Landlord; however, the actual request or re-statement of the issue would have been buried within the lengthy messages from the Tenant

that cover a range of issues. While this should have been up to the previous owner, the Landlord here made the repair.

The Tenant also gave detail on the state of the walls and ceiling within the rental unit. The older building is still settling, and this issue would only get worse over time, currently looking "atrocious." They gave detail on particular areas of concern in the walls, describing holes and a triangular-shaped aperture as seen in their provided photos. They also provided an image of the gouge in their front door. They specified the paint was not the deeper issue; rather, mould accumulated in the past is still in place and requires proper remediation.

In response, the Landlord stated there would be painting in the spring 2022, specifically within this unit. The work will include patching the door to the rental unit.

The Tenant also stated in their Application that the rental unit has an air conditioner that needs a service visit; specifically, this is a "recharge/fix." The Landlord in response stated that the air conditioner was checked and cleaned in March 2022, undertaken with inspections on air con units in the building.

b. rent reduction for repairs not provided

The Tenant claims $25 per month for the past 36 months that the Landlord did not rectify the matter with the fan in their bathroom. This totals $900. The maintenance person in the building had previously told the Tenant they did not have to abide by the prior Residential Tenancy Branch decision stating the fan needed to be replaced, specifically ordering the Landlord to make that repair. The Tenant described that they "were told very story in the book" by the Landlord who did not make the replacement.

The Tenant provided a seven-page document to describe the issue from their perspective. They outlined the history of successive landlords prior to the Landlord here, who did not attend to the Tenant's maintenance requests in a timely manner. They refer to the "useless, local real estate agency [*i.e.*, the Landlord]", and also state: "I shouldn't have to babysit *grown adults*, RTB, *supposed* professionals." Also: "Jesus, just excuses so [the owner is] not held responsible for having to do the work."

They also presented specific instructions on how the ceiling should be restored or remediated, step-by-step, because of the mould issue, and issues concerning lingering moisture in place when they use the bathroom.

The Tenant also presented they had to buy a new bathmat because of the “arrogant, useless handyman” (also described as an “argumentative jack-ass”) dropped toilet cistern dye material on their Tenant’s old mat. They spent “approximately $45.00” on the new replacement bath mat. In the hearing, the Tenant reiterated that it was the principle of the matter, rather than the actual bath mat in question. The Tenant noted this occurred in 2018. In response to this in their written response, the Landlord acceded to this amount as a gesture of good will to the Tenant here.

The Tenant also described how they previously had a locker in the storage room, only to find out in 2021 that this locker was being used by someone else. This is a “bloody fiasco” from the Tenant’s viewpoint, and they summed up the matter as just one other issue that the Landlord refused to investigate. They accused the Landlord of stealing the locker, meaning the Landlord needs to *“seriously* apologize and make amends.”

This is part of their claim for the amount of $280 for the loss of personal property in that locker. This was a heirloom chair ($120), an inflatable raft ($85), a small compressor ($70) and their lock on that locker unit ($5).

The Landlord, in their response, offered a new locker to the Tenant on April 13, 2022. This included a new lock. To this, the Tenant responded they want the same old locker, “because this shouldn’t have happened in the first place.” The Landlord responded to say that the Tenant’s claim here should not be granted, as the Tenant never brought these items to their attention before. Moreover, it would not be their practice to remove a lock, then simply disposing of the contents therein.

c. restriction on the Landlord’s right to enter

The Tenant stated on their Application that they have never had to endure “inspections” before; and equate the need for the Landlord’s quarterly inspections as subscribing to “Good Housekeeping”. They raise their concern as a privacy issue and point out that that Landlord inspections are not set out in the tenancy agreement.

In the hearing the Tenant set out that the Landlord only gives 1 or 2 days notice prior to an entry, and these inspections are not necessary.

In their written submission, the Landlord raised their concern with the state of the interior of the Tenant’s rental unit. This is “very poor condition” and the Landlord provided photos to show the same in their evidence. This is a large amount of garbage or recycling to accumulate. The

Landlord mentioned the *Act*, and its provision for a monthly inspection by the Landlord with proper notice.

d. the Landlord's compliance with the legislation and/or the tenancy agreement

Here the Tenant raised the issue of a neighbour that they present is "disagreeable for over 8yrs now." They allege this neighbour is harassing them, and now they "sicked the biased landlord on me." They provided two requests to the Landlord: one dated April 14, 2021, and the other dated July 6, 2021. These are Tenant responses to the Landlord's query on noise complaints against the Tenant from the neighbour. The Tenant's end command to the Landlord is, simply stated: "Fix this."

In the hearing, the Landlord summed up to say this was a situation in which they asked the Tenant to reduce the sound level at certain times, and "mostly the Tenant would turn things down." The Landlord provided a complaint from another building resident about the Tenant here reacting to their request for lowered sound. This resulted in a call to the RCMP, and that other resident proposing a stop to their own rent payments because "I'm paying for him [*i.e.*, the Tenant] to harass me on a daily basis."

The Landlord also set out they receive "a number of complaints against the Tenant", from those who won't put complaints on paper. Presumably this is because of their fear of retaliation from the Tenant.

The Tenant also mentioned the imposition of NSF fees by the Landlord. In their written piece prepared for this hearing, they mentioned it happened two years ago, and state "this is the first time that I am hearing about the first supposed NSF penalty fee issue."

The Tenant also used this piece of their Application to re-state their complaints to the Landlord about the heat being controlled by another building resident. This means they have to engage their own system to provide cooler air when the temperature is actually cooler. The Tenant is not comfortable with this situation; however, in the hearing they stated "I don't mind" having to use their own oil heater at times, and "it's actually pretty good."

For this, the Landlord provided a record dated November 30 in which the Tenant presented that the neighbour who does control the heat control was given an important responsibility, yet "every year he fucks it up." The Tenant provides more detail on their need to provide cooler air in the cooler seasons in reaction to the adverse heating control.

Analysis

a. repairs in the rental unit

The bathroom fan issue has been resolved; therefore, there is no further need for the Landlord's response to the Tenant's queries on this issue.

Similarly, I find the Landlord addressed the Tenant's concern with the air conditioning unit when the unit was cleaned and checked in March. The Tenant did not contradict this point made by the Landlord in the hearing.

The Landlord also provided in the hearing that there is a schedule for painting within the building for this spring 2022. As well, the Landlord has pledged to repair cracking and sealant in the bathroom. The issue with the gouge in the front door will also be addressed.

The Tenant must provide access to the Landlord for completion of an assessment in the bathroom; this has been an issue in the past and the Tenant shall no longer impede the Landlord's progress on an issue that the Tenant continues to raise as a concern.

I find the Landlord is aware of the Tenant's concern with mould that has accumulated in the rental unit because of the continuing fan repair issue. It is not too heavy a burden on the Tenant to expect that the Landlord may wish to investigate further, and this will necessarily entail inspections within the rental unit. The Tenant must accommodate the Landlord's notices to enter for these purposes. I find it more likely than not that the Landlord has not taken up serious consideration of the issue due to the Tenant making inspections difficult, and the messaging they bring to the Landlord, which is inappropriate on all counts.

I strongly urge the Tenant to provide a succinct, bullet-point list of concerns they have within the rental unit concerning repairs, to present to the Landlord when the Landlord conducts an inspection. This should ensure that any issues are identified and easy-to-discuss, as opposed to lengthy emails that do not focus on key issues. The Tenant chooses to send emails on the issues, and it is not difficult to see why issues from the Landlord's perspective get misplaced in this confusing line of communication that stems from the Tenant each time.

Based on the Tenant's style of communication and raising of numerous grievances – including what the Landlord offers as solutions or steps towards solutions – I find the repair and paint job will more likely than not be met with further complaints from the Tenant. This decision stands as a record that the Landlord complied with the Tenant's requests and addressed them fully in this hearing.

In sum, the Tenant's request for repairs to the unit is dismissed, without leave to reapply.

b. rent reduction for repairs not provided

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish 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.

I dismiss the Tenant's claim for a rent reduction in the amount of $25 per month for each of 36 months for the time they were allegedly waiting on fan replacement. They did not provide sufficient evidence to show the past Landlord did not respond to a prior dispute resolution proceeding. Additionally, the Tenant did not explain waiting this length of time to bring the matter to the attention of their current Landlord. I find that is not an effort at minimizing the damage done here.

Added to this is the Tenant's tenacious mode of communication as I described above. I find the Tenant not clearly communicating their concerns in a respectful manner has worked against them given the amount of time the bathroom fan issue took to be resolved. This is a newer Landlord, inheriting some carryover issues from the old. Given the Tenant's insistence on positioning blame, making disrespectful comments and accusations, I find that they have not provided a short-route solution to the bathroom fan issue, prolonging things illogically. This accounts for the length of time taken for resolution of this issue, and that lies entirely with the Tenant. I make no award for a rent reduction as the Tenant claimed here.

Similarly, the matter with the stained bathmat occurred in 2018. The bathmat would, in all likelihood, have reached the end of its useful lifespan in any event. Additionally, the way the Tenant described the issue, it seems to be a matter of simply washing the bathmat in question and being done with it. Additionally, though the Tenant in the hearing stated the value of said

bathmat was $25, they claimed $45. Though the Landlord as a gesture of goodwill offered to pay, I make no award to the Tenant for this frivolous claim.

The Tenant did not provide a clear indication of notifying the Landlord of stolen property. Similarly, with the accusation of theft, there is no record of the Tenant taking that up as a criminal matter with police. There is no record of the Tenant taking this up in a proper and clearly communicated fashion with the Landlord, even though it involves a serious claim of missing property or theft; therefore, I find the Tenant has not mitigated their loss in this situation, and there is no award to them for this portion of their claim.

In sum, there is no compensation to the Tenant, and I dismiss this piece of the Application without leave to reapply. Fundamentally, they have not minimized their damage by raising issues to the Landlord succinctly and in a timely manner, nor have they proven a breach of the *Act* by the Landlord.

c. restriction on the Landlord's right to enter

I dismiss this part of the Tenant's Application for two reasons:

- The tenancy agreement mentions the Landlord's entry, and even expressly sets out the Tenant's consent to the Landlord's entry where the purpose is the subject of the Tenant's own issue about repairs or other matters. I find the agreement is in place for a reason, and mirrors that of the provision of the *Act* that authorizes such entry.
- The *Act* s. 29 is that section, granting the Landlord the right of entry with proper notice in writing, at least 24 hours in advance. The purpose of said entry must be reasonable, and only between certain set hours in the day. Most importantly, the *Act* authorizes the Landlord's entry <u>on a monthly basis</u>.

I find what the Tenant raised here is a complaint about the inconvenience of having the Landlord enter their rental unit. I also find it more likely than not that the Tenant is concerned about the Landlord taking issue with the state of the rental unit, even as a possible cause for ending the tenancy.

The Tenant presented no evidence to show the Landlord breached the tenets of the *Act* or the tenancy agreement in any way when dealing with their need to enter the Tenant's own rental unit. Counter to this, the Landlord sent evidence of their notice to the Tenant, in written form, at least 24 hours in advance. This prompted another angry lengthy response from the Tenant.

For these reasons, I dismiss this claim of the Tenant, without leave to reapply.

d. the Landlord's compliance with the legislation and/or the tenancy agreement

Given the communication provided as evidence in this hearing, and the Tenant's conduct in the hearing, I find it more likely than not that the Tenant is the source of conflict with the neighbour. Throughout their written submissions, statements in the hearing, and especially email communication to the Landlord, the Tenant makes every effort to enter belittling comments and intense, even threatening language to describe the issues.

Here is a small yet representative sample of the Tenant's communication on miscellaneous issues:

- "Horseshit, horseshit, horseshit."
- "I had to take care of the cancer that your company brought in here . . . a whole bunch of feral orphan kids who were terrible to deal with. . . it's all about money with you folks."
- "Interesting . . . how you'll waste time tracking me down via email and phone . . . yet you can't even reply to my very egregious issue of someone, probably from [Landlord's agency] arrogantly and stupidly cutting a live lock on an occupied storage locker . . ."
- "What is with these ridiculous inspections? I'm a grown adult, I paid my damage deposit, and not even the owner is aware of them. They're just an unnecessary invasion of privacy. . . I'm not here to serve you. . ."
- "Good 'ol [Landlord company name]: doing the job half-assed."
- "On that note, *why* is rent *rarely* ever taken out on the first?! I'm lied to and told that it is but... you know that it isn't. Anywhere from usually the second to even the fifth yet a lot of times it'll be backdated to the first. It should *all* be automated and electronic!!! Just tell [Landlord proper name] to get her accounting department to extract funds on the first. I know that [the Landlord] doesn't give a shit but it *really* becomes an annoyance when rent just sits there, getting in the way of other withdrawals at the beginning of the month."
- "Why are you contacting me on the weekend?! I'm getting notes on my door for the useless feckless quarterly inspections on the weekend . . ."
- "Do you read my messages or just pause over them quickly?!"
- "I hope that you're not going to get some dopey hack, who calls himself a handyman, to come in here."
- "[former Landlord proper name], the landlord at the time who's like a bloody Pit Bull"

From this I conclude there is no evidence the Landlord has handled any issue concerning the Tenant's neighbour in an inappropriate manner that was in violation of the *Act* or the tenancy

agreement. I find the Tenant is confrontational in the extreme, and the Landlord is communicating in an appropriate manner under these circumstances.

The Tenant did not present actual evidence of the imposition of NSF fees and did not refer to these specifically by date. They also did not present evidence to show fees were imposed contrary to the *Act* or the tenancy agreement. Without evidence, I dismiss this trivial portion of the Tenant's claim.

Also, the Tenant's description of their need for a parking space contained no reference to any request to the Landlord. This turned out to be another rant against their neighbour. With no evidence of a request to the Landlord of any sort, I find this portion of the Tenant's claim is also trivial and I make no concession to the Tenant on this piece.

I reproduced portions of the Tenant's correspondence and submissions above to illustrate the level of diatribe they choose to present to the Landlord. I evaluate the correspondence as that of an individual who will never be satisfied with the responses of the Landlord where they live. They violate social norms, with no courtesy whatsoever, in trying to get their points across.

I caution the Tenant that the Landlord reserves the right under s. 47(1)(d)(i) to end the tenancy on the grounds of significant interference or unreasonable disturbance of another occupant *or the landlord*." The Landlord also described other tenants' viewpoints and issues raised with the Tenant here; however, this did not form any substance of any of the issues discussed in the hearing. It is not difficult to perceive the continued correspondence such as what was submitted for the hearing here can be viewed as a severe imposition on time, and even harassment or verbal bullying to the Landlord, and other occupants, when personal characteristics are outlined and expounded upon by the Tenant as was evident in the correspondence presented for the hearing here. I strongly urge the Tenant to re-evaluate this mode of communication, in light of the current difficult rental market situation, and the exceptionally low amount of rent they currently pay.

Conclusion

Because of my reasons above, I dismiss this Tenant's Application in its entirety, without leave to reapply.

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: May 3, 2022