Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, PSF, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

I left the teleconference connection open until 11:35 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5,000.00.”

Preliminary Issue – Service

The tenant served the notice of hearing on May 18, 2022 via registered mail sent to the landlord’s address for service recorded on the tenancy agreement. The tracking number and the landlord’s address for service are recorded on the cover page of this decision.

Based on the tenant's convincing testimony and the tracking number, I find the tenant served the notice of hearing in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the landlord is deemed to have received the notice of hearing on May 23, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

The tenant served the evidence via email sent on June 09, 2022 to the landlord's pre-authorized email address for service. The tenant affirmed the landlord confirmed receipt of the evidence.

Rule of Procedure 2.5 states:

> To the extent possible, the applicant should submit the following documents at the same
> time as the application is submitted:
> • a detailed calculation of any monetary claim being made;
> • a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
> • copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

Rule of Procedure 3.14 states:

> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

The tenant did not explain why he did not serve the evidence with the notice of hearing, as required by Rule of Procedure 2.5.

The landlord is deemed to have received the evidence on June 12, 2022, per Regulation 43. The hearing was on June 23, 2022. The tenant served the evidence less than 14 days before the hearing date.

I excluded the tenant's evidence from consideration, per Rules of Procedure 2.5 and 3.14.

Preliminary Issue – Moot claim

The tenant moved out on April 30, 2022. The application for an order for the landlord to provide services or facilities is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for the landlord to provide services or facilities.

The notice of hearing states:

01. I want to reduce rent for repairs, services, or facilities agreed upon but not provided. $2,500.00.
    From the 14th of March, 2022 to the date of the 1st of April the following essential services had not been available to the tenants: access to main washroom and shower, access to laundry machine and dryer, access to kitchen area, limited access to common areas. In addition, both the tenants expressed concerns over the maintenance being done, being as they are both are asthmatic and susceptible to major health concerns with the presence of drywall dust. As well, the heating system has been shut.
02. I want the landlord to provide services or facilities require by the tenancy agreement or law.
    Same as above. If needed I can attempt to contact [redacted for privacy] for a work order, as many of the amenities not provided by the landlord (heating was completely shut off) cause an incredible inconvenience to the drywallers and impacted the length of the project also. I can also contact cellular carrier for proof of call history, as I attempted multiple times to seek a solution but was promptly ignored.
03. I want compensation for my monetary loss or other money owed. $240.00.
    Due to kitchen access being limited during the duration of the weeks of repairs; outside meals were purchased to accommodate the lack of availability from the 14th of March 2022 to the 1st of April, 2022.

The tenant testified he is seeking a rent reduction in the amount of $1,250.00 because of the repairs and because a proper bed was not provided. The tenant is seeking an order for the return of the security deposit in the amount of $1,250.00.

The tenant did not indicate in the application that he is seeking an order for the return of the security deposit, under section 38 of the Act. The tenant did not indicate that he is seeking compensation for not having a proper bed.

Per Rule of Procedure 6.1, the arbitrator will conduct the hearing in accordance with the Act, the Rules of Procedure and principles of fairness. I find the tenant did not apply for an order for the return of the security deposit and for compensation for not having a proper bed. I find that it is not fair to proceed with a claim for an order for the return of the security deposit and for compensation for not having a proper bed.

Issues to be Decided

Is the tenant entitled to:

01. an order to reduce the rent for repairs?
02. a monetary order for compensation for damage or loss?

Background and Evidence

While I have turned my mind to the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the tenant's obligation to present the evidence to substantiate the application.

The tenant stated the parties entered into a fixed-term tenancy from September 01, 2021 to April 30, 2022. Monthly rent of $2,500.00 was due on the first day of the month. At the outset of the tenancy a security deposit of $1,250.00 was collected and the landlord holds it in trust. The tenant did not serve his forwarding address.

The tenant stated the 2 bedroom rental unit had mandatory plumbing repairs from March 14 to April 01, 2022 (the repairs period). The tenant testified the landlord informed him the repairs period would be only 5 or 6 days. The tenant said that during the repairs period the tenant could not use the washing machine and the dryer, one of the two bathrooms, the kitchen and that the heat was not working. The tenant said he had access to these services and facilities after 3:00 P.M. on April 01, 2022.

The tenant affirmed the contractors informed him that it was not safe to enter the kitchen because of the repairs. The repairs were needed because of wear and tear. The tenant believes the rental unit was built in 2002.

The tenant asked the landlord for a rent reduction because he could not use the services and facilities above mentioned during the repairs period in the amount of $1,250.00, but the landlord did not authorize a rent reduction. The tenant paid the full amount of rent.

The tenant believes the repairs could have been concluded in a shorter period.

The tenant incurred expenses in the amount of $240.00 with take-out meals, as he could not cook during the repairs period.

The tenant slept 2 or 3 nights in his friend's house and had to do laundry in his friend's house during the repairs period.

The tenant used the second bathroom during the repairs period, but his roommate did not feel comfortable sharing the bathroom with him.

The tenant testified there was a lot of dust because the drywalls were broken for the repairs. The tenant has severe asthma and his health condition worsened during the repairs period. The tenant had three counselling sessions because of the stress related to the repairs and paid a total amount of $600.00 for counselling.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)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.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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. In order to determine whether compensation is due, the arbitrator may determine 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 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 the case is on the person making the claim.

Rent reduction

Section 65(1) of the Act states:

> (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 agreemen**t, the director may make any of the following orders:
> […]
> (b)**that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;
> […]
> (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**;
>
> (emphasis added)

Residential Tenancy Branch Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

The tenant claims he suffered a reduction in his tenancy in the amount of $1,250.00 for the repairs period, which is 19 days. I accept the uncontested testimony that monthly rent was $2,500.00. Thus, daily rent was $83.33 ($2,500.00 divided by 30 days) and the

rent for the repairs period was $1,583.27 ($83.33 x 19 days). The tenant claims he suffered a rent reduction in the amount of 75% of the rent paid because of the repairs.

Section 32(1) of the Act states:

> 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.

Residential Tenancy Branch Policy Guideline 01 states:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

I accept the uncontested testimony that the tenant could not use the washing machine and the dryer, one of the two bathrooms, the kitchen and that the heat was not working during the repairs period.

The tenant did not claim compensation for the counselling expenses. I am considering the tenant’s claim for a rent reduction because of a reduction in the value of the tenancy overall.

The tenant slept in the rental unit during the repairs period for all the nights, except 2 or 3 nights. The tenant accepted the repairs were necessary and believes the rental unit was built in 2002. The tenant’s health condition worsened during the repairs period. The landlord informed the tenant that the repairs would last 5 or 6 days.

Based on the tenant’s convincing testimony, I find the tenant proved, on a balance of probabilities, that the repairs period could have been shorter and that the landlord breached section 32(1) of the Act by completing the repairs in 19 days.

Based on the tenant’s convincing testimony, I find the tenant failed to prove, on a balance of probabilities, that he suffered a reduction in his tenancy in the amount of 75% of rent. Considering the circumstances above mentioned, I find that, because of

the landlord's breach of section 32 of the Act, the tenant suffered a loss in the tenancy resulting in 30% of the rent due for the repairs period.

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenants' favour in the amount of $474.98 to compensate the tenant for the reduction in the value of the tenancy agreement.

Take-out meals

I accept the tenant's uncontested convincing testimony that he incurred expenses in the amount of $240.00 with take-out meals, as he could not cook during the repairs period.

Based on the tenant's convincing testimony, I find the tenant proved, on a balance of probabilities, that he suffered a loss in the amount of $240.00 because the landlord breached section 32(1) of the Act by not completing the repairs in a timely manner.

Thus, I award the tenant $240.00.

Summary

In summary, the tenant is entitled to $714.98.

The parties should observe section 38 of the Act regarding the return of the security deposit.

Conclusion

Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of $714.98.

The tenant is provided with this order in the above terms and the landlord must be served with this order. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: June 24, 2022