Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANSON REALTY LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE, RR, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on March 7, 2022 seeking:

- the Landlord's compliance with the legislation and/or the tenancy agreement
- reduction in rent for repairs not provided
- suspension/set conditions on the Landlord's right to enter
- reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 23, 2022**.**

Preliminary Matter – Service of documents

The Landlord confirmed they received the Notice of this hearing, delivered from the Tenant to the Landlord's workplace. Though the Landlord stated they did not receive evidence initially with the Notice, they confirmed they did receive all of the Tenant's evidence in advance, and in a timely manner in line with the *Residential Tenancy Branch Rules of Procedure*.

The Tenant took issue with the method the Landlord used to serve their evidence to the Tenant and on the "last day past the day of the deadline"; however, I confirmed in the hearing that the Landlord provided the material in compliance with the seven-day Respondent timeline as set out in the *Rules*. The Tenant did, most importantly, confirm that they received the material from the Landlord. The *Act* s. 88(g) allows for service by attaching documents to the door of the rental unit where a tenant resides. I find this

mode of service does not affect the Landlord's credibility, despite the Tenant making that supposition on their own.

The Tenant provided "rebuttal" evidence to the Landlord's responses that they received approximately one week before the hearing. This was within days of the scheduled hearing, and the Tenant stated they did not provide copies of this to the Landlord. Because this material was not disclosed to the Landlord, I give no consideration to this evidence as it would be fundamentally unfair if any part of my consideration referred to it without the Landlord having the chance to review that material.

Preliminary Matter – the Landlord's compliance with the *Act* and/or tenancy agreement

On their Application of March 7, 2022, the Tenant stated their objection to a certain named restoration company hired by the Landlord to complete renovations in the rental unit. This was because of the Tenant's conflict with some agents of that individual company.

Since that time, the Landlord hired another restoration company. The Landlord has set 22 days in mid-September to early-October for completion of the renovation. The Landlord presented evidence showing detail on the scope of work (dated April 4 and April 14, 2022) and a detailed estimate of the cost of the work. The company gave a detailed list of dates to the insurer and the Landlord presented this communication in their evidence.

I find this evidence shows the Landlord's insurer found another company to undertake the work and provided a detailed timeframe for the completion of work. The Tenant was aware of this in June 2022. There is no need for a decision on this issue, with the Landlord arranging for completion of the work approximately one month after the Tenant applied, and finalizing the schedule by mid-May, approximately one month before this hearing.

Given this finding, I dismiss this piece of the Tenant's Application, without leave to reapply.

Preliminary Matter – the Landlord's right to enter the rental unit

On their Application, the Tenant listed their knowledge of three different timelines for restoration completion. The longest timeline – as stated by the Tenant on their Application – was "14 weeks or longer" as allegedly told to them by the Landlord. The Tenant claimed monetary compensation if the project takes longer than two months, which is the maximum time they would be willing to move out from the rental unit.

In the hearing the Tenant stated that they included this ground to be resolved prior to finalization of that information from the Landlord, with the latest information being an updated three-week timeline. This is as set out in the Preliminary Matter listed above. I interpret the Tenant's intention here on this ground as attempting to limit the timeline of work to be done which would entail limiting the Landlord's right to enter the rental unit for that specific project.

Given the clarity on this from the Landlord in the time since the Tenant made their Application, I dismiss this issue from consideration as it has been resolved by the date of the hearing. I dismiss this piece without leave to reapply.

Issues to be Decided

- Is the Tenant entitled to a reduction in rent for repairs agreed upon by the Landlord, but not provided, as per s. 65 of the *Act*?

- Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord and the Tenant each provided a copy of the tenancy agreement in this matter. In the hearing they confirmed the basic information therein: the tenancy started on May 1, 1998 at $1,300 per month. The tenancy over the years was subject to rent increases, with the current amount of rent at $2,094. In the hearing the Landlord drew attention to the various clauses in the agreement regarding either party's rights or obligations.

The Landlord in their written response set out a succinct description of the catalyst issue that led to the Tenant's Application. This was a "water seepage" that occurred at the rental unit on December 30, 2021. This was due to the washing machine leak with the "water supply tube coming off the washing machine." The Landlord maintains that they attended to the matter promptly, providing a receipt showing the plumber's immediate visits on December 30, and on December 31 to clamp the tube in question.

The Landlord and the Tenant each communicated to the insurer regarding coverage for the incident in question. By April 2022 the Landlord worked with their insurer to hire a restoration company with the work commencing in September 2022. In their written response, the Landlord noted the Tenant will not need to pay rent during the scheduled repair period from September 12 to October 4, 2022. The Landlord provided a new washing machine by approximately mid-February and the Tenant acknowledged this in the hearing.

In the hearing, the Tenant acknowledged that the Landlord with a plumber came in and did some immediate work; however, "about 2 days or a week later" the same leak happened for the same reason involving the washer. The Tenant presented that they engaged with their own insurer for this matter. This is why the Tenant claims $500 to be paid for them for their insurance deductible, because "it didn't happen once." The Tenant submitted that this amount is "pretty good" with a standard insurance policy deductible falling somewhere between $0 and $1000, and this is the amount of the "lowest deductible" that they "paid for [i.e.] a policy with the lowest deductible." In the hearing the Tenant confirmed that they did not engage with their own insurer for this incident involving the washing machine and they had to clean up the water initially, and for this the Landlord gave them $140.

The Tenant brought forth other compensation claims regarding events that happened since the beginning of the tenancy in 1998. They did this as the result of their discussions with the Residential Tenancy Branch, who advised (paraphrased by Tenant in the hearing): 'as long as I'm a tenant and still have the agreement I can go back and sue for anything that happened."

The Tenant prepared a Monetary Order Worksheet that sets out seven items:

#	Items	$ claim
1	Hot tub & pool closed (24 mos. X $300)	7,200
2	"dog garden" closed for 6 years (x $200)	14,400
3	Flooding (2010?) elevators/hallway/carpeting (10 mos. X $500)	5,000

4	2 weeks renovation Sept 2018	1,500
5	20 years no change of carpeting (120 mos. X $300)	36,000
6	Painting 60% done after 20 years (180 mos. X $200)	36,000
7	Ceilings never painted in 24 years (288 mos. X $100)	28,800
	Total	**128,900**

The Tenant provided details on the above pieces in the hearing. The Landlord's response is chiefly in their written response starting on page 2:

1 The Tenant explained these as "maintenance issues" and their claim here is based on their discussions with other building residents, who "got up to $500 back a month back for the hot tub and pool closing". The Tenant stated they "put $300 which is 15% of my rent". The Tenant also proposed that a proportionate reduction in rent is covered by the Landlord's insurance.

The Landlord responded to say the building strata manages the closure of the hot tub or the pool. This was due to a strict public health order. They manage only the unit, and not the building.

2 The Landlord stated there is no "dog garden" in the building, and instead there is a "Japanese garden" that was once the common area of the building. There is another area that residents can use.

The Tenant reviewed the history of the building, initially provided because there was no area available to residents for leisure or pets, in use from 1998 to approximately 2015. The Tenant maintained that the garden was still part of the building, and they paid rent for extra amenities which encompasses this extra area. The Tenant was unsure about their discussions with the Landlord in the past on this issue and maintained that the Landlord in the past voted to close the area available for pets because they don't like dogs.

3 The Tenant could not recall the year of the flooding event; however, they recalled that it was from the 24th floor to the bottom of the building. As a result, two of the elevators did not work and that presented the immense challenge of having to walk 24 flights of stairs. The hallway, as well as the interior of the rental unit carpeting was wet. The work entailed noise and dirt, and "took hours" for the Tenant to go down and up over the timeframe of 8-10 months.

The Landlord presented this was a matter for the building only and did not affect the rental unit. The Landlord stated the Tenant did not mention this to the Landlord at all.

4 Another renovation in 2018 had the Landlord requesting the Tenant to place belongings in a smaller area in the rental unit to complete work. This limited the use of the Tenant's own bedroom and bathroom. This led to carpeting not fully changed within all areas of the rental unit. The Tenant was on a trip during this time and proposed the Landlord should have reduced rent during that time.

The Landlord provided that it was the Tenant's own request to have renovations and repairs within the rental unit in 2018. The rental unit was fully habitable during that time.

5,6,7 The Tenant presented that they requested the repair of carpeting, and painting. The Landlord apparently stated it was the Tenant's own responsibility. This led to an infection that was disruptive to the Tenant. They called the Residential Tenancy Branch in the past who advised of typical timelines for maintenance and/or repair. The Tenant estimated that after their call to the Branch, and subsequent request to the Landlord based on that discussion, that the Landlord changed approximately 80% of the carpeting, and 60% of the painting, and this forced a change of the appliances, "even though [the Landlord] refused to."

The Landlord re-stated that the Tenant requested for certain items to be renovated, and these had the Landlord's approval. The dates were provided by the Tenant, "so [the Landlord] carried out everything according to [the Tenant's] request."

The Landlord pointed to the upcoming September – October extensive renovations requiring the Tenant's signature on the agreement provided as page 46 in their evidence. This was to be signed by June 20; however, the contractor relayed to the Landlord that the Tenant refused to sign this agreement.

Analysis

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

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.

In their itemized list for their claim, the Tenant referred to events that happened in the past. The *Act* s. 65 contains the provision for future rent to be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement, where a party has not complied with the *Act* or the tenancy agreement. Given that the Tenant applied on this ground for events in the past, I find any rent reduction that may be possible retroactively would either take the form of compensation as per s. 67, or a rent reduction going forward.

Regarding the hot tub, pool, and access to some space designated for pets, I find there was no breach of any term of the tenancy agreement or the legislation by the Landlord. The agreement as provided by the Landlord does not contain a specific provision that mandates access. The Landlord submitted this was a matter for the strata; therefore, I find the burden rests with the Tenant to prove the matter instead rests with the Landlord exclusively. I find that would entail reference to some of the strata bylaws or other meeting minutes in place to prove it is the responsibility of the Landlord to provide unfettered access to those areas for the Tenant. Minus this evidence, I find there was no violation of the *Act* or the tenancy agreement by the Landlord here. I dismiss the Tenant's claims for 1 and 2 listed above.

Regarding a flood at some undisclosed time in the past that allegedly affected floors from the ground level to the 24th, the burden of proof rests with the Tenant to prove the impact. I find they have not provided accurate information on either true damage

resulting from a flood, or other impact on the tenancy. I side with the Landlord in finding that, minus evidence to the contrary, there was no impact to the Tenant's daily life in the rental unit. I find what the Tenant presents is an inconvenience, and there is no proof that a damage or loss to them existed. Accordingly, I dismiss this piece of the Tenant's claim for compensation.

Regarding renovations in 2018, I find the Landlord is more credible on their explanation that this was a matter of repairs and renovations within the rental *at the Tenant's own request*. The Tenant was away on a trip; therefore, I find it more likely than not that there was no interruption to them in the rental unit during that time.

For the remaining items, I consider the important principle of mitigating damage or loss comes in to play. The Tenant is referring to timelines of 20 or 24 years, with no record they regularly asked the Landlord for updates or painting. Similar to the immediate point above, I find the Landlord provided their statement that they were responsive to the Tenant's requests within reason.

As well, the Tenant could not provide accurate timelines in line with their claim which stretches to quite some time in the past. As a result, these are rather staggering amounts to be claimed after quite some time. Overall, this is not an effort at mitigation, without more recent requests even coming into play, with no proof thereof from the Tenant. These final pieces of the Tenant's claim are dismissed.

Regarding the reimbursement of the Tenant's own insurance premium, I am not sure from the evidence why that would be warranted. More importantly, because there is no evidence of the actual cost of said benefit, the Tenant has not proven the value of this piece of their claim for compensation. It seems the Landlord is gracious in replacing that amount; however, with the actual amount unproven, I make no concession for that amount of compensation. I dismiss this additional piece of the Tenant's claim for this reason alone.

For the reasons above, I dismiss the Tenant's claims for a retroactive reduction in rent, without leave to reapply.

Because the Tenant was not successful in this Application, I make no award for reimbursement of the Application filing fee.

Conclusion

I dismiss the Tenant's claim in its entirety, with 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: July 18, 2022

Residential Tenancy Branch