Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BEST CITY PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, MNRT, RR, RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement;
- a monetary order for the cost of emergency repairs;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord make repairs to the rental unit or property; and
- to recover the filing fee from the landlord for the cost of the application.

The parties did not attend the hearing but were both represented by Legal Counsel.

At the commencement of the hearing the parties agreed that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2022 should be cancelled, and therefore, I so order.

The parties also agreed that all evidence has been exchanged and should be considered, and pursuant to Section 74 of the *Act*, no oral testimony was heard. Legal Counsel for the landlord submitted that *res judicata* applies, to which Legal Counsel for the tenant submitted that some events happened after previous hearings and were not previously covered.

By consent, this Decision is based solely on the evidentiary material provided by the parties.

Issue(s) to be Decided

The issues remaining to be decided are:

- does *Res judicata* apply to the tenant's application?
- has the tenant established
    - a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement?
    - a monetary claim for the cost of emergency repairs?
    - that rent should be reduced for repairs, services or facilities agreed upon but not provided?
    - that the landlord should be ordered to make repairs to the rental unit or property?

Background and Evidence

TENANT'S EVIDENCE:

The tenant has provided a copy of a tenancy agreement signed by a landlord's agent on August 31, 2018 for a fixed-term tenancy to commence on September 1, 2018 and ending on September 30, 2018 at which time the tenant is to move out of the rental unit. It also specifies rent in the amount of $6,000.00 payable on the 1st day of the month and a security deposit of $3,000.00, but no pet damage deposit.

The tenant has also provided an email from the landlord to the tenant dated July 17, 2019 advising that the tenant's locker unit was not properly secured, and asking that the tenant do so.

Numerous receipts for locker rent have been provided indicating payments of $299.25 each with a "Paid Through Date" of September 4, 2019; October 4, 2019; November 4, 2019; December 4, 2019 and January 4, 2020. Also an email from a storage company dated December 15, 2019 with the monthly payment receipt attached.

An email from the landlord dated August 11, 2019 states that the parties had had a conversation and the landlord gave the tenant's phone number to the plumber in order for the tenant to set up an appointment to do the repairs. It also states that repairs hadn't been started because the tenant had sent messages that the tenant was taking family

away for a few days, and the landlord and contractor were waiting for the tenant's return, but now with the tenant's authorization the landlord will ask the plumber to start the repairs and hopefully it will be finished before the tenant's return.

The tenant has also provided an invoice from an appliance company dated 01/27/22 for a washer and dryer, as well as an e-transfer in the amount of $525.00 to (LTL) dated December 16, 2021.

An email has also been provided from the landlord dated February 2, 2022 stating that a listing agent had been appointed to sell the rental property. Another the same date is an introduction from the listing agent (SN) seeking to schedule a meeting with the tenant and to view the home.

The tenant sent an email to (SX) dated March 26, 2022 about the landlord's statements, and setting out dates that realtors and others have coordinated with another person, and visited the property on the landlord's behalf over the past months and reasons.

Also provided is a copy of an order and a Decision of the Residential Tenancy Branch dated November 23, 2021 following a hearing on November 22, 2021 stating that:

- the tenants had applied for an order cancelling a notice to end the tenancy for landlord's use of the property and for an order reducing rent for repairs, services or facilities agreed upon but not provided.
- the tenant and an agent for the landlord "AA" attended;
- the Decision was made by me and ordered that the notice to end the tenancy dated June 26, 2021 was cancelled, the tenancy continues, and that rent be reduced to $3,900.00 per month until repairs completed;
- the tenant was awarded compensation in the amount of $24,000.00 and permitted to reduce rent till that sum is realized.

The tenant has provided copies of emails to the landlord indicating the rent reduction from the monetary order made for the months of December, 2021; January, February, March and April, 2022. Also bank transaction records all in the amount of $3,900.00 rent for June, July, and August, 2022 have been provided for this dispute.

The tenant has provided 2 pages only of a 3-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2022 and containing an effective date of vacancy of April 18, 2022 for unpaid rent in the amount of $3,900.00 that was due on April 1, 2022. Also, an email which appears to be from the tenant to the landlord dated April 30, 2022 deferring rent for May, 2022.

The tenant has also provided an undated email from the tenant to the landlord speaking of damages to the lower floor making it “inhabitable” due to a flood from a broken pipe, and that the bathroom and kitchen were unusable for several months. It also states that the flooding was reported to the recipient in mid-May, 2019 and repairs were done several months later, completed in mid-March, 2020. It also states that major leaking from the roof was reported many times and got fixed at end of August, 2019, also lasting several months. The email seeks compensation, and that the land-line be connected.

The tenant has also provided a string of emails between law firms related to bills.

Copies of a Notice of Civil Claim filed in the Supreme Court of British Columbia on March 1, 2022 by the tenant, a Response filed on March 18, 2022 by the landlord, and a Supreme Court order dated April 7, 2022 made after application dismissing the Notice of Civil Claim in its entirety have also been provided by the tenant for this dispute.

LANDLORD’S EVIDENCE:

The landlord has provided a consolidated evidence package containing a letter of authorization to the landlord’s Legal Counsel on behalf of the landlord; as well as several of the same documents provided by the tenant.

In addition, the landlord has provided an email string regarding a withdrawal of a notice to end the tenancy dated April 20, 2022, and an email from the tenant’s Legal Counsel dated April 11, 2022 stating that this application had been filed. A reply from the landlord’s Legal Counsel dated June 8, 2022 to the tenant’s Legal Counsel advises that the tenants gave an implied mutual agreement to end the tenancy in the Residential Tenancy Branch matter filed on August 3, 2021 stating that the tenants wanted to stay until the end of September, 2022. It also states that the landlord will seek judicial intervention if it was a material misrepresentation. Also, that since the tenants provided notice to end the tenancy effective September 30, 2022, the tenant is estopped from changing that position. A draft Judicial Review Procedure is attached.

A response from the tenant’s Legal Counsel states that the tenants cannot agree to move out on September 30, 2022.

Analysis

I have reviewed all of the evidentiary material, and there is no question that the parties attended a hearing before me on November 22, 2021 on an Application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord’s use of

property and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The landlord had testified that there was a flood in the basement of the rental unit due to burst pipes on June 10, 2021. A restoration company arrived to do repairs and the landlord explained to the tenants that they had to move out until the work was done, without paying rent, but the tenants refused. The insurance company agreed that the basement is 35% of the house and it would be reasonable to have the tenants refrain from using the basement and to reduce rent by that amount, which the landlord agreed to.

The landlord had also testified in that hearing that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property, and a portion of the Notice was provided as evidence for that hearing. The Decision states that it is dated July 26, 2021 and contains an effective date of vacancy of September 30, 2021, and the reason for issuing it states: "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental uni." The landlord had testified that the landlord intends to move in and has 2 kids aged 21 and 19.

In that hearing the tenant testified that the tenants moved into the rental home in 2018 with their 2 children, and a minor pipe burst in the bathroom on June 9, 2021. The plumber advised that because it's an old house it would take 48 hours for all the work to be completed. The only portion that flooded was part of the wall of the kitchen and bathroom on the lower floor, which also happened the prior year which took 4 days to accomplish. On this occasion, another company showed up and started tearing down everything including floors where there was no flooding, and cabinets. More flooding was caused by the workers' failure to seal both the warm and cold pipes, which the tenant ultimately fixed himself. The landlord said it was better to be fully fixed and wanted to fix the whole place even though the landlord was told that the bathroom was the only problem, and it was rendered uninhabitable. Nothing had been fixed in the previous 5 months; the washer was out of service for 3 months; the roof leaked 2 years prior and it took the landlord 6 months to have it repaired.

The tenant also testified in that hearing that the landlord told the tenant that he wanted to list the house for sale and that rent could be as high as $8,000.00 or $9,000.00 and that the tenants would have to move out before winter. No one told the tenants that 35% would be returned to the tenants.

The Analysis portion of the November 21, 2021 Decision states that I was not satisfied that the landlord had demonstrated good faith intent, and that since neither the landlord nor the tenant provided a full copy of the Notice, I cancelled the Notice and ordered that the tenancy continues. It also states that 35% of a rent reduction was considered to be fair, as offered in the landlord's testimony, and the landlord was ordered to reimburse the tenants the sum of $11,900.00 and that rent be reduced by $2,100.00 per month, to $3,900.00 per month, until repairs were completed. I also ordered that the tenants recover $12,000.00, being 2 months' rent for the 2 months the previous year that the tenants had paid rent but were not able to reside in the rental unit. The total monetary order in favour of the tenants was $24,000.00, and I ordered that the tenants be permitted to reduce rent until that sum is realized, or may otherwise recover it.

The Notice of Civil Claim was filed by the tenant in the Supreme Court of British Columbia on March 1, 2022 seeking compensation of property value added to the rental unit; monetary compensation for loss by refunding the full amount of rent paid since June, 2019; a declaration that the tenancy agreement is still legally valid; compensation for damage of 12 times the monthly rent due to wrongful eviction, or alternatively 12 months of rent for seeking and moving into another residence.

The Response to the Civil Claim was filed with the Supreme Court of British Columbia on March 18, 2022, which admits to a portion of the Civil Claim, and denies the facts alleged in most of the Civil Claim. The Response also states that on November 23, 2021 the RTB provided reasons and an order regarding the parties on many if not all of the issues raised in the tenant's claim. It also states: "29. To the extent that the claims are identical, overlap, or should have been canvassed before the RTB, the Defendant says that the within claim is ***res judicata.***" It also states that nothing in the tenant's claim raises any matter outside the RTB's jurisdiction and has already been considered, and the Supreme Court must not exercise any jurisdiction.

The tenant's Civil Claim was dismissed on application by the landlord. The order is dated April 7, 2022.

In this application the tenants claim $1,795.50 for the cost of renting a storage room for 6 months; $3,120.48 monetary compensation for the cost of emergency repairs for the cost of replacing the washer and dryer and electrical repair costs; a further reduction in rent by $900.00 per month; an order that the landlord make the repairs; and to recover the $100.00 filing fee. The application states that "… besides the inhabitable basement and all hazards caused, some services including land-line, house-cleaning and

gardening were agreed and offered at the start of the lease but all discontinued some time later."

RES JUDICATA

[] Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache* and *Vey Gamache v. Mark Megyesi* and *Century 21 Bob Sutton Realty Ltd*., Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the following passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

> In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.

Mr. Justice Hall goes on to state at p.12 "Disputed issues that are finally determined in one proceeding may be held to be binding on a party when that issue comes up in subsequent litigation".

In *McIntosh v. Parent*, 55 O.L.R. 553 (Ont. C.A.) at p. 555, the court defined the principle of res judicata as follows:

> Any right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, or as an answer to a claim set up, cannot be-retried in a subsequent suit between the same parties or their privies, though for a different cause of action. The right,

> question, or fact, once determined, must, as between them, be taken to be conclusively established so long as the judgement remains.

In this case, there is no question that the order made by me on November 23, 2021 remains outstanding until all repairs are completed by the landlord. That does not leave it open for the landlord to continue to gut the house, making it more uninhabitable than it was in November, 2021. If the landlord continued to cause more disruption, I am of the opinion that *res judicata* would not apply. However, there is no evidence of that. The Honourable Mr. Justice Hall stated it very eloquently in my opinion that: "The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." (underlining added)

The tenant's evidence includes an email that the tenant sent to the landlord stating that the repairs were completed in mid-March, 2020, and seeks compensation for: "…the problems we endured caused by the very long delays in care and repairs which in turn led to our deprivation for long periods of time of major parts of the property for which we duly paid for leading to a lot of pressure and stress for me and my family for several consecutive months and poor living conditions."

With respect to the tenant's claim $1,795.50 for the cost of renting a storage room for 6 months, I find that *res judicata* applies, as it properly belonged to the subject of previous litigation and ought to have been brought forward at the November 22, 2021 hearing and the Notice of Civil Claim, but was not. Further, there is no evidence to satisfy me that the rented storage room was necessary or included in the rent, or that it is a responsibility of the landlord. The receipts provided for the cost of storage are for the months of September, 2019 through January, 2020. The hearing before me was held on November 22, 2021, and the tenant had the opportunity to raise the issue at that time.

With respect to the tenant's claim of $3,120.48 for the cost of replacing the washer and dryer and electric repair costs, the *Residential Tenancy Act* specifies how emergency repairs and compensation are dealt with:

> **33** (1) In this section, **"emergency repairs"** means repairs that are
>
> (a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

(a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, the tenant claims the cost of replacement of a washer and dryer, which do not meet the definition of “emergency repairs.” The tenant’s application also seeks such compensation for an electric repair cost of $525.00 and has provided a copy of an e-transfer in that amount from (LTL), but no evidence to satisfy me that the repair made qualified as an emergency repair or that paragraphs (3) (a), (b), or (c) of Section 33

have been accomplished. Therefore, I dismiss the tenant's application for compensation related to the cost of emergency repairs.

With respect to the tenant's claim for a further reduction in rent by $900.00 per month, the tenant's application states that "… besides the inhabitable basement and all hazards caused, some services including land-line, house-cleaning and gardening were agreed and offered at the start of the lease but all discontinued some time later." The evidence to support it are the emails dated April 29, 2020 wherein the tenant requests compensation from the landlord and reconnection of the land-line. I find that the tenants have claimed the compensation in the original application before me, and that *res judicata* applies.

With respect to the tenant's application for an order that the landlord make repairs, the application states that the tenant has contacted the landlord in writing to make repairs but they have not been completed. It also states: "Land-line got disconnected in 2020. House cleaners used to come but not any more. No gardening for years. The basement was flooded in 2019 and demolished in 2021." The evidence to support the claim consists of an email from the landlord to the tenant dated August 11, 2019 and a reply from the tenant the same day. The tenant's reply seeks the landlord's action regarding repairs promptly. The other evidentiary material to support the tenant's request is the undated email from the tenant to the landlord seeking monetary compensation and that the land-line be reconnected.

A landlord is required to provide and maintain a rental unit in a state of decoration that, having regard to the age and character, makes it suitable for occupation by a tenant. I don't believe there is any question that we are in a digital world, but having a land-line, that was provided to the tenant at the beginning of the tenancy is required, and could not have been contemplated that the landlord would not have had it connected during the renovations and repairs in earlier proceedings, especially considering that cable and internet are provided in the tenancy agreement.

I have also reviewed the tenancy agreement which states that yard maintenance and landscaping is the responsibility of the owner, but not housecleaning services.

I order the landlord to provide a land-line to the rental unit by no later than August 31, 2022, and to re-commence yard maintenance and landscaping immediately.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the $100.00 filing fee. I order that the tenant may reduce rent by that amount for 1 month only.

Conclusion

For the reasons set out above, and by consent, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 7, 2022 is hereby cancelled and the tenancy continues.

I hereby order the landlord to have the land-line installed by no later than August 31, 2022.

I further order the landlord to recommence landscaping and yard maintenance immediately.

I further order that the tenant be permitted to reduce rent by $100.00 for 1 month only, as recovery of the filing fee.

The balance of the tenant's application is hereby dismissed without leave to reapply.

This order is final and binding.

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: August 22, 2022

Residential Tenancy Branch