# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OLC, RR, FFT

Introduction

The tenant seeks various relief under the *Residential Tenancy Act* ("Act"). Namely, an order for landlord compliance (section 62 of the Act[1]), an order for the reduction of rent (section 65), and recovery of the cost of the application filing fee (section 72).

Attending the arbitration hearing on August 19, 2022 were the tenant, a support person for the tenant (the tenant's partner), and a representative for the corporate landlord (hereafter the "landlord"). The parties were affirmed, and no service issues were raised.

Preliminary Issue: Tenancy Has Ended and Section 62 Order

The tenancy ended on June 30, 2022 and as such the application for an order under section 62 is now moot. Orders of compliance are only granted during a tenancy, and not after a tenancy has ended. As such, this aspect of the tenant's application is dismissed without leave to reapply.

Issues

1. Is the tenant entitled to a reduction in rent by way of compensation?
2. Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

[1] All section references are to the *Residential Tenancy Act,* SBC 2002, c. 78.

The tenancy in this dispute began June 15, 2021 and ended on June 30, 2022. Monthly rent was $1,800.00. Two copies of the written tenancy agreement were submitted into evidence. There is a minor discrepancy between the two copies about which I will address in a moment.

In her application, the tenant seeks $201.00 in compensation representing 6½ months of a portion of her rent, from the beginning of the tenancy during which the oven was inoperable, and for which a reduction in rent is sought. Various contractors came and went, diagnosed the problem, ordered parts, and eventually fixed the oven in early January 2022. The tenant's partner briefly testified as to the history of the repairs and visits by various contractors.

The tenant also seeks $173.00 in compensation representing 5½ months of a portion of the rent during which the dishwasher—which was provided in the rental unit and presumed to have been in working order—was inoperable, and for which a reduction in rent is sought. The problem was reported to the landlord's representative on June 24, 2021 and the dishwasher was finally back in working order on December 13, 2021. While the dishwasher was not completely broken, that is randomly stopped at least twenty times during a wash and rinse cycle essentially rendered it near-unusable.

The landlord testified that they did their best to address the broken oven and dishwasher, dispatched a maintenance person, but they ran into difficulties when ordering the spare parts. The amount of time it took to repair the appliances was not within the landlord's control, he submitted. In all, the landlord "did what we could do" and that it took time, he added.

Last, the tenant seeks $1,800.00 in compensation representing 12 months ($150.00 per month)—the length of the tenancy—during which she was not provided parking, despite the original tenancy agreement indicating space for one vehicle to be included in the rent. The first copy of the Residential Tenancy Agreement indicates, on page 2, by way of an "X", that parking for "ONE" vehicle was included in the rent.

During initial conversations with the landlord's agent, the tenant was under the impression that there was a parking spot for one vehicle. She signed the tenancy agreement that included this term. It was not until the day she moved in that she discovered that there was in fact no assigned parking spot. There was no underground parking, either. After further discussions with the landlord's agent, the tenant was told that there was parking, but that it was on-street, public road parking.

A later version of the tenancy agreement was then sent to the tenant in which the word “ONE” was removed or whited out. (However, this second version still included the “X” in the check box next to parking.)

The tenant testified that the agent said there was a typo in the original agreement, that there was simply no parking, and that nothing could be done about it. The only parking was “free” public parking on the street. However, given the location of the rental unit, the tenant testified that it often took her fifteen minutes or more of driving around looking for somewhere to park. She explained that having a designated, reserved parking stall was important to her; she has a dog and she needed to come home mid-day to tend to the animal.

In response to this aspect of the tenant’s claim, the landlord testified that they manage seven luxury rental units in the building and that none of those units have any assigned parking. He commented that the agent and the tenant engaged in conversations around the parking problem, but this went unresolved. He further commented that he was unaware of any other tenancy agreement by which parking was indicated as being included, only the version without any parking was in front of him. Nevertheless, the landlord apologized for any confusion that may have occurred over this issue.

In rebuttal, the tenant testified that the landlord’s agent acknowledged that there had been a typo regarding the parking. The landlord was therefore aware of this issue.

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.

Section 65(1)(f) states that

> 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 agreement, the director may make any of the following orders: [. . .] that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

In this dispute, there is no disagreement that the tenant's oven and dishwasher were inoperable for a period of time. The tenant is entitled to have a working oven and working dishwasher as part of the rental unit for which she was paying $1,800.00 in rent. A dishwasher and oven are included in the rent, as indicated on page 2 of the tenancy agreement.

While the landlord is to be commended for making efforts to fix the broken appliances, the fact remains that the tenant was without two important appliances. The amount that the tenant seeks in compensation for the lack of the oven and dishwasher—$374.00—is more than reasonable. It represents a mere 3% of the total rent paid during the period in question. As such, I am persuaded by the evidence that the tenant is entitled to a reduction in past rent in this amount. Given that the tenancy ended a few months ago, the tenant shall be awarded this amount under section 67.

Regarding the parking, an email from the tenant to the landlord's executive assistant, sent on September 8, 2021, indicates that the realtor told her several times about there being "off street parking." The landlord did not dispute that these conversations occurred (nor, it should be added, did either the landlord's executive assistant or the realtor "Melissa" attend the hearing to provide any sworn testimony to counter the tenant's version of events). The first version of the tenancy agreement, an agreement that was signed by both parties, clearly indicates that parking for one vehicle would be included in the rent. It is this agreement that the tenant signed. And there is no evidence before me to find that the tenant consented to a change, as required by section 14.

Given that it was the landlord who was responsible for drafting the tenancy agreement, they must therefore bear the consequences of including a term in the contract for which they later realized was in error. Including parking in the rent is a significant benefit to a tenant, and thus the tenant is entitled to either a reduction in rent (which never occurred) or compensation after the fact. While it is not my finding that the landlord was deliberate or somehow conniving in its dealings with the tenant on this point, the landlord was nevertheless negligent, and the tenant was ultimately deprived of a service for which she was paying rent. If the landlord was unable to provide parking as promised and indicated on the initial tenancy agreement, then they ought to have found a solution. They did not.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the tenant has proven on a balance of probabilities that she is entitled to compensation in the amount of $1,800.00 for the landlord's failing to provide an essential service and term of the tenancy, namely parking.

$150.00 per month represents 8.3% of the monthly rent. And, given the importance that the tenant placed on the provision of parking, the amount claimed is more than reasonable.

Section 72 permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. Generally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, as the tenant was successful in her application, the landlord is ordered pay the tenant $100.00.

In total the tenant is awarded $2,274.00. The landlord is hereby ordered, pursuant to sections 67 and 72, to pay this amount to the tenant within 15 days of receiving a copy of this Decision. A monetary order is issued in conjunction with this Decision, to the tenant. If necessary, the order may be enforced in provincial court.

Conclusion

**The application is hereby granted, and the tenant is awarded $2,274.00.**

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

Dated: August 22, 2022

Residential Tenancy Branch