



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant represented themselves with assistance.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlord testified that they received the tenant's materials and had not served their evidence on the tenant. The tenant confirmed that they have not received any of the landlord's materials. Based on their testimonies I find the landlord duly served in

accordance with sections 88 and 89 of the *Act*. As the landlord has not served the tenant with their materials in accordance with the *Act*, the Rules of Procedure, or at all, I have excluded the landlord's evidence from consideration.

Issue(s) to be Decided

Is the tenant entitled to the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy was \$2,300.00 payable on the 15th of each month. A security deposit of \$1,150.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a 2-bedroom 2-bathroom suite in a strata managed multi-unit building.

The parties agree that on February 6, 2022 there was water damage to the suite originating from one of the bathrooms in the unit. The tenant informed the landlord who arranged for inspection and repairs. The parties agree that the repairs required the bathroom to be unusable and the work was ongoing through to June 2022.

The tenancy ended on June 14, 2022 in accordance with a notice given by the tenant. The parties confirmed that the tenant has not provided a forwarding address in writing to the landlord and the landlord retains the full deposit. The parties declined to have a forwarding address provided during the present hearing and the tenant confirmed the address for service in their application is not their forwarding address.

The landlord says that due to the disruption caused by the ongoing work in the rental unit they have provided the tenant a total rent reduction of \$300.00 over the months of March and April 2022, approximately 6.5% of the monthly rent. The tenant disagrees with the landlord's recollection and testified that they have only been provided a rent reduction of \$150.00 for March 2022. No documentary evidence of rent payment was submitted showing the amounts paid during these months of the tenancy.

The tenant submits that the ongoing construction work caused considerable disruption to their life including being unable to use one of the bathrooms in the rental unit, having

to share the only bathroom in the suite with their roommate, having workers attend in their suite, housing materials, equipment and large machines in the suite and living with the noise, dust and debris associated with the work. The tenant suggests a monetary award of \$2,300.00.

The landlord says that all repairs and work was done in a reasonable manner given the nature of the deficiencies. The landlord testified that they have already provided sufficient rent reduction to the tenant for the loss in the value of the tenancy and no further amount should be payable.

Analysis

The tenant seeks compensation for loss in the value of the tenancy due to the water damage and ongoing restoration work during the period when they resided in the rental unit. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I accept the undisputed evidence of the parties that from February 6, 2022 to June 2022 the rental unit suffered water damage and was undergoing repairs and maintenance work. I accept the evidence that the ongoing work limited the tenant's ability to use the full rental unit including being unable to use one bathroom and areas of one of the bedrooms. I further accept that the nature of the damage and work meant that the rental unit was in a state of disrepair including walls and flooring being removed and equipment being stored throughout the living areas so that the tenant was constantly aware of the deficiencies in the suite.

The parties disagree on the amount of the rent reduction that has already been provided to the tenant. The tenant confirmed they have been given a deduction of \$150.00. the landlord testified that they have issued twice that amount of \$300.00. While both parties have failed to provide documentary evidence in support of their respective position I find

the testimony of the landlord to be cogent, detailed and consistent while the tenant provided inconsistent information, at first submitting that they have not been given any deduction until recalling they were given a rent reduction. Based on the testimony I find that a rent reduction of \$300.00 has already been provided.

I accept the evidence that despite the ongoing disruption and work the tenant continued to reside in the rental unit throughout the tenancy. I accept the evidence by way of the tenant's testimony and photographs that the nature of the deficiencies were such that the tenant was constantly aware of the need for repairs and required to alter some of their daily routines such as limiting their use of to certain areas, but not so severe that the rental unit is uninhabitable. The deficiencies were unavoidable in the tenant's daily life but were surmountable.

I accept that the repair work in the rental unit was ongoing for a period of nearly four months, from February 6, 2022 when the issue was discovered until sometime in June 2022. I find that the disruption to the tenant was palpable and led to a reduction in the value of the rent for this tenancy. While I find that the tenant was able to reside in the suite I find that much of their activities and daily routines were affected negatively.

Based on the foregoing I find that a retroactive rent reduction of \$920.00, representing 10% of the monthly rent of \$2,300.00 over a period of four months to be appropriate. This award takes into consideration the amount of \$300.00 which I have already found was provided to the tenant by the landlord.

As the tenant was successful in their application, they are also entitled to recover their filing fee from the landlord.

While neither party has filed an application for the disposition of the security deposit, both made oral submissions while confirming that the tenant has not yet provided a forwarding address to the landlord.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's provision of a forwarding address in writing.

In the present case I find that the tenant has not yet provided a forwarding address in writing to the landlord. Therefore, the landlord's obligation under the *Act* to return the

tenant's security deposit has not started. Once the tenant provides a forwarding address to the landlord in writing the landlord will then have 15 days to apply for dispute resolution or return the tenant's security deposit.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,020.00. The landlord must be served with this Order as soon as possible. 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: September 27, 2022

Residential Tenancy Branch