



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMI HOLDINGS LTD and ROCKWELL MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Tenant: CNR, CNC, RR, RP, OLC
Landlord: OPR-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch’s teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure

about behaviour including Rule 6.10 about interruptions and inappropriate behaviour Both parties confirmed that they understood.

At the outset of the hearing, AW confirmed that their name was misspelled on the tenant's application. As neither party was opposed, AW's name was amended to reflect the proper spelling of their name.

Although I note that the tenant had filed an application to dispute a 1 Month Notice to End Tenancy for Cause, the parties confirmed that the dispute only relates to several 10 Day Notices to End Tenancy issued by the landlord. As the dispute does not pertain to a 1 Month Notice, this portion of the tenant's application was cancelled.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute in relation to the 10 Day Notices.

Both parties agreed to the following final and binding settlement of both applications in relation to the 10 Day Notices to End Tenancy:

1. Both parties entered into a mutual agreement that this tenancy will end on November 30, 2022 at 2:00 p.m., by which date the tenant(s) and any other occupants will have vacated the rental unit.
2. Both parties agreed that the November 2022 rent is due on or before November 1, 2022.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable.

The tenant testified that they wanted to proceed with the hearing in relation to the remaining issues referenced in their application.

The landlord requested a monetary order for the recovery of the unpaid rent and parking fees that have accrued up to October 1, 2022. RTB Rules of Procedure 4.2 allows for an amendment to be made at a hearing in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. I am satisfied that the

monthly rent and parking fees are set at \$1,450.00 and \$35.00 respectively, and are due on the first day of each month. On this basis, I have accepted the landlord's request to amend their original application to include a request for a monetary order to reflect the unpaid rent and parking fees that became owing by the time this hearing was convened.

Issues

Is the landlord entitled to a monetary order for unpaid rent and parking fees?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on February 1, 2022, with monthly rent set at \$1,450.00, payable on the first day of each month. The landlord still holds a security deposit of \$725.00 for this tenancy.

The landlord has served the tenant with multiple 10 Day Notices to End Tenancy for Unpaid Rent. The landlord testified that the tenant now owes \$10,345.00 in unpaid rent and parking fees as of October 1, 2022. The landlord submitted a Statement of Account dated October 24, 2022 detailing the amounts owed by the tenant.

The tenant does not dispute that they have withheld rent and parking payments in the amount of \$10,345.00. The tenant testified that they had suffered considerably during this tenancy due to the landlord's failure to repair and maintain the rental unit. The tenant filed their own application requesting repairs and a retroactive and ongoing rent reduction of 50% of the monthly rent for the landlord's failure to address the issues reported by the tenant in this tenancy.

The tenant testified that they have a bed bug and fire ant infestation in their rental unit that has not been addressed despite multiple written requests to the landlord. The tenant submitted photos of the bed bugs in their rental unit, the bites they have received, and the six written requests they have made to the landlord about the required repairs and bed bugs and fire ants in their rental unit. The tenant testified that the landlord blamed the tenant for bringing the bed bugs into the rental unit, and ignored their requests.

The landlord responded that they had attempted to enter the tenant's rental unit to investigate the issues, but the tenant would respond in a violent manner, and refused the landlord entry. The landlord testified that the tenant had attended and signed off on the move-in inspection, indicating that they had understood and accepted the condition of the rental unit. The landlord argued that the tenant only raised these issues after failing to pay the rent, and after the landlord had served the tenant with the Notices to End Tenancy.

Analysis

Section 32 of the *Act* reads in part as follows:

32 (1) *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...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

Based on the testimony of both parties, and the written evidence before me, I find that despite repeated requests from the tenant in writing which date back to March 19, 2022, the landlord has not addressed the tenant's concerns. I note that each requests references the same issues that have not been addressed, which include repair requests for the bathroom sink, drawers and doors that are falling off their hinges, wear and tear to the kitchen floor, as well as bed bug and ant issues in the rental unit. I note that the bed bug and ant issue was noted on multiple written requests as shown on the

April 15, May 15, June 1, and June 10, 2022 requests. The tenant testified that none of the reported issues have been resolved as of the hearing date.

Based on the evidence before me, which include photos and written requests by the tenant, I am not satisfied that the repairs and maintenance have been completed in a manner that complies with section 32(1) of the *Act*. Although the landlord notes that the tenant was aware of the condition of the rental unit as noted at the move-in inspection, this does not relieve the landlord of their obligations to maintain and a rental unit in a state of decoration or repair that complies with safety and housing standards.

Although the landlord testified in the hearing that they had attended the rental unit, but was refused entry, I am not satisfied that the landlord had provided sufficient evidence to support that this was the case. The landlord has not provided logs, invoices, or reports to support that any contractors or employees of the landlord have been dispatched to investigate the reported issues. Furthermore, I find that the tenant has provided sufficient evidence to support that as of the hearing date that all of the issues remain outstanding despite repeated written requests dating back several months. Although the tenant has withheld rent payments, the landlord is still obligated to fulfill their obligations under the tenancy agreement and *Act* as long as the tenancy is in place. In this case, I find that the landlord has failed to demonstrate that they have made satisfactory attempts to repair and maintain the rental unit in a manner that complies with section 32 of the *Act*.

As I find the issue with the bed bug infestation to be an urgent one, given the fact that the bed bugs have the ability to multiple and affect not only the tenant, but others residing in the building, I order the landlord to retain the services of licensed pest control company to inspect and, as required, address any bed bug, ant, or pest infestations on or before November 14, 2022.

I also order that the landlord address the multiple repair requests made by the tenant, with proper notice given to the tenant as required by the *Act*. I order that these repairs be completed on or before November 30, 2022.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement. I find that due to the landlord’s failure to address the tenant’s requests for repairs and pest control treatment, the tenant had experienced a reduction in the value of the tenancy agreement.

On preponderance of the evidence and the totality of factors comprising a *tenancy agreement* I am not satisfied that the tenant's request of a 50% rent reduction to be reasonable nor supported. I find a 5 percent reduction to be reasonable and justified, and accordingly, I allow the tenant a retroactive rent reduction of 5 percent of the rent for the months of March 2022 through to October 2022 as the first written request was made on March 19, 2022. This results in a monetary award of **\$580.00**. (8 months @ \$72.50 per month).

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied that the landlord had provided sufficient evidence to support that the tenant owes \$10,345.00 in outstanding rent and parking fees as of the hearing date. Accordingly, I allow the landlord a monetary order for this amount. This amount owed will be offset by the rent reduction ordered above.

The landlord continues to hold the tenant's security deposit of \$725.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue an Order of Possession to the landlord effective November 30, 2022 at 2:00 p.m. The landlord is provided with this Order in the above terms and the tenant must be served with this Order **only** in the event that the tenant does not abide by condition #1 of the above settlement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the services of licensed pest control company to inspect and, as required, address any bed bug, ant, or pest infestations on or before November 14, 2022.

I also order that the landlord address the multiple repair requests made by the tenant, with proper notice given to the tenant as required by the *Act*. I order that these repairs be completed on or before November 30, 2022.

I am ordering a retroactive rent reduction of \$72.50 per month for the months of March to October 2022. This results in a monetary award of **\$580.00** (8 months @ \$72.50 per month). If the landlord fails to comply with the above repair orders, the tenant is at liberty to apply for further rent reductions. Liberty to apply is not an extension of any applicable timelines.

I issue a \$9,040.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent and parking fees accrued up to October 2022, which is offset by the rent reduction granted above.

Item	Amount
Unpaid Rent & Parking Fees	\$10,345.00
Less Rent Reduction Granted for March 2022-October 2022	-580.00
Less Security Deposit Held	-725.00
Total Monetary Order	\$9,040.00

The tenant must be served with this Order as soon as possible. Should the tenant 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: November 01, 2022

Residential Tenancy Branch