Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING FURNISHED SUITES, NEW WEST 727 HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the "Application") on September 14, 2022 seeking:

- compensation for monetary loss or other money owed
- repairs to the unit, site, or property, after contacting the Landlord in writing to make repairs, not yet completed
- 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 November 3, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to present oral testimony during the hearing.

Preliminary Matter – correct Landlord entity name

The Landlord in the hearing provided their correct business name. Accordingly, I have amended the Respondent Landlord's name on this decision and any monetary order I may grant.

Preliminary Matter – evidence disclosure

The Tenant received the Notice of Dispute Resolution Proceeding (the "Notice") document from the Residential Tenancy Branch on September 28, 2022. In the hearing the Tenant provided that they sent this document to the Landlord by registered mail, including preparatory

evidence they provided with their Application. The Landlord confirmed they received the Notice from the Tenant in this way.

The Tenant provided further evidence to the Residential Tenancy Branch, received by the Branch on October 24, 2022. This was a copy of more recent correspondence to the Tenant from the Landlord. In the hearing, the Landlord stated they only received a copy of that further evidence on the morning of November 3, prior to the hearing. The Landlord stated their concern with the timeliness of this disclosure, citing the *Residential Tenancy Branch Rules of Procedure* (the "*Rules*").

Rule 3.14 of the *Rules* specifies that evidence not submitted with the Application – evidence "that is intended to be relied on at the hearing" – must be received by the other party not less than 14 days before the hearing.

I find this secondary evidence that the Tenant provided does not meet this guideline. Applying Rule 3.17 of the *Rules*, I exclude the evidence from consideration. Given that the Landlord only received this evidence on the day of the hearing, I find they would be prejudiced by its inclusion.

The Tenant confirmed they received the Landlord's evidence in advance. I give full consideration to the Landlord's evidence in this decision because the Landlord submitted that evidence to the Residential Tenancy Branch and provided it to the Tenant at least seven days in advance of the scheduled hearing, as required by Rule 3.15.

Issue(s) to be Decided

- Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

- Is the Tenant entitled to completion of repairs they previously requested, pursuant to s. 32?

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

Background and Evidence

The Tenant provided a copy of the tenancy agreement their roommate signed in 2009. The Tenant provided that they have remained in the rental unit for a long time, and any Landlord or property manager they have dealt with in the past knows they are a tenant. The agreement shows a month-to-month tenancy that has continued through different landlord arrangements. They continue to pay a rent amount of $670 through to the present.

In their 4-page statement dated September 13, 2022 and submitted with their Application, the Tenant listed the following problems in the rental unit:

- 7 years ago, there was a leak in the ceiling because of the building roof leak. This caused the bathroom ceiling to collapse. This required a large hole in the living room ceiling to locate the leak, and this hole was never fixed, in addition to a large open hole in the bedroom. The Landlord visited and took pictures; however, there was no completed repair. The Tenant has not been able to use the bedroom since the ceiling fell in.

- A neighbour had plumbing work completed and this caused backup into the Tenant's bathroom sink and bathtub. When they inquired, the Landlord told the Tenant that "since [the Tenant] had been living there for over 10 years that it is not their responsibility and that [the Tenant] needs to fix it [themself]." The Tenant proposed fixing the problem then reducing their rent accordingly; however, the Landlord did not agree to this.

  Because of this, the Tenant has been living without a shower for around 1.5 years when the backup problem occurred. They have to go to a community centre to take a shower at the cost of $1 per visit.

- They have used space heaters for all these years, and "have had to foot the bill for the hydro [*i.e.*, paid for electricity costs associated with these extra space heaters]."

They sent a list of items that need repair to the Landlord, dated July 26, 2022, and presented in their evidence. They gave the Landlord a 30-day timeframe in which to make repairs; however, the Landlord only visited to take pictures, and never made repairs.

The Tenant presented the following for compensation:

- $432, being the cost of 2 tenants having to take showers at the community centre three times per week, at $1 per visit per person, for the last 18 months

- $1,120 for the cost of having to pay for the use of space heaters, at $20 per month, for the months of October to May for the past 7 years
- $16,800, being $200 per month for the past 7 years, for the inconvenience of having to live this way. This means they have been reduced to living in the living room, without use of the bedroom because of the ceiling damage.

The Tenant described only knowing about the Residential Tenancy Branch means of resolving issues only recently because of a prior hearing in which the Landlord sought to end the tenancy for reasons of unpaid rent.

The Tenant also described a meeting with the Landlord in early 2021 where the Landlord offered a buyout, "to move everyone [*i.e.*, all building residents] out." The group of tenants made a counteroffer to the Landlord that "was completely ignored and nothing came of it." The Tenant submits this is part of the reason for the Landlord's lack of repair of these items within the rental unit.

The Tenant presented 7 photos that show items within the rental unit needing repair.

In the hearing, the Tenant presented that the matter continued for approximately 7 years, when the previous Landlord replaced their bed. Issues were known to them, and this means the current Landlord must have known about the issues when they took over. The pictures they provided in their evidence are those taken by the Landlord on one of their visits more recently.

In their evidence provided to support their response, the Landlord included the Tenant's written request for repairs dated July 26, 2022. This gives a list of needed repairs for each room. In this letter the Tenant specified that "30 days is an appropriate amount of time."

In response to the Tenant's Application, the Landlord provided a quotation from a construction firm, dated August 15, 2022. The Landlord submits that this shows they responded to the Tenant's request for repairs.

That quotation amount is $25,987.50. The great majority of the amount for bathroom renovations is $19,000, with $4,800 for drywall repair and painting throughout the rental unit, and window repair for $950. In the hearing, the Landlord added that the timeline for repairs would be 4 to 6 months. They also stated this was "a perfectly valid contractor's opinion."

In the hearing the Landlord stated they were not disputing that repairs were needed throughout the rental unit. Concerning the amount claimed by the Tenant, the Landlord raised the point that the Tenant did not take steps to mitigate the impact in the past. The Tenant did "not

complain adequately in the past", and was "only bringing this now, after 7 years." The Landlord also presented that they have an upcoming dispute resolution process wherein they applied for vacant possession of the rental unit for the purposes of renovation.

The Landlord described the issue of their knowledge about an issue with the bathtub: they did not know it left the Tenant unable to bathe in the rental unit – the Tenant simply did not present it this way to the Landlord. Similarly, the Landlord did not know about any issue with heating. These issues were only raised by the Tenant in 2022, and this is what prompted the Landlord to obtain a quotation on a cost for renovation work.

The Landlord submits the Tenant presented no record of prior communication with the Landlord. This means the Tenant's claim in terms of requests for repairs is valid only from 2022 onwards: once the Landlord was aware of the issues, they responded from that time onwards. The Landlord also described the process with the operations manager who receives complaints – they are the go-to person in the building for any tenant to make a complaint.

The Tenant reiterated in the hearing that problems were known to the Landlord since 2015, and they were specific on details. They presented that the amount presented in the Landlord's quotation is "blown out of proportion". The Tenant also mentioned they did not have time, in preparation for this hearing, to obtain other quotations that would more realistically show a more feasible amount for repairs or renovations.

Analysis

I am satisfied that the Landlord is aware that the Tenant who presented in this hearing is the occupant of the rental unit in question. I find there is nothing preventing this Tenant from making the Application and speaking to the specific issues.

To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient evidence to establish all of the following four points:

1. That a damage or loss exists;
2. That a 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.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or the 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.

On their Application, the Tenant made a threefold request for compensation:

- reimbursement for the cost of having to take showers at a locale outside the rental unit, for the past 18 months
- cost for using space heaters for the past 7 years
- a rent reduction for each month since the start of the tenancy for the inconvenience of having to live with these issues present in the rental unit.

The timelines involved are significant. I find the Landlord rightfully questioned the Tenant's timing in raising significant issues for repair. The Tenant's allegation that nothing was done over such a longer period must be proven with reference to their requests to the Landlord for repairs. The Tenant did not provide evidence of any requests over a timeframe approximating seven years or alternately since the start of this tenancy. With significant issues in place, I would expect to see written requests to the Landlord. The Tenant here relied on the Landlord's knowledge of issues arising since 2015; however, they cannot be certain of this without verification that the Landlord knew the full extent of the issues involved and there is no evidence of that. Similarly, the Tenant described repeatedly asking "when are you going to fix the suite?"; however, this is of marginal value when the question becomes one of compensation for lack of repairs in the rental unit.

Because the Tenant did not provide tangible proof of their requests to the Landlord, I find as fact that the Landlord was not aware of the Tenant's use of space heaters within the rental unit. There was no information about the Tenant complaining to the Landlord in the past about a lack of heat within the rental unit. Again, this continued for 7 years. I can only conclude that the Tenant chose to accept this mode of heating the rental unit given this length of time. If their verbal complaints to the Landlord were not met with any response, then the Tenant within that time had the positive duty to try alternate means of having heat provided within the rental unit.

As well, on the individual item of heat, I find there is no reference to the amount involved. That is to say, the Tenant did not justify the amount of $20 per month as the extra utility charges involved with their use of heaters.

I appreciate that the Landlord changed a couple of times over the years; however, this does not diminish the need for the Tenant to identify issues present and notify the Landlord of the need for repair. That was just not in place for the great majority of time in this tenancy. I am not faulting the Tenant for not bringing a dispute resolution process earlier in this matter; indeed, I accept that they did not know about that process. What is problematic here was the Tenant not notifying the Landlord of the full extent of issues that were continuing, and not to their satisfaction, over quite some time.

I cannot conclude that the Landlord was aware of extensive problems within the rental unit and did nothing. The evidence to support that notion just is not present. The record that *is* present is the Tenant's July 26, 2022 letter to the Landlord. I find the Landlord within a relatively short timeframe obtained a quotation for the amount of work involved, and this was prior to the Tenant filing their Application here. In other words, the Landlord was not spurred to action by the Tenant filing an Application at the Residential Tenancy Branch. I find as fact that the Landlord obtained a quotation for the work involved, based on the Tenant's written request.

For this reason, I find the Tenant did not mitigate the damage or loss. There is no evidence the Tenant even suggested to the Landlord that their use of the rental unit was reduced because of the lack of repairs. I dismiss the Tenant's claim for a retroactive reduction in rent for this reason.

Similarly, I dismiss the Tenant's claim for reimbursement of their cost to use the facilities at a community centre three times per week. I find there was no reason the Tenant could not inform the Landlord of this in the past, and there is no evidence they informed the Landlord specifically about their non-use of the bath/shower, nor their need to go elsewhere for that purpose. I find it plain that a tenant would inform their landlord of this in a timely manner.

In sum, I dismiss the Tenant's application for compensation because there is no evidence they informed the Landlord of the issues in the rental unit in a timely manner, neither in writing, nor using descriptors and qualifiers such as they presented here in this hearing.

In terms of needed repairs, the *Act* s. 32 sets the positive obligation on the Landlord to maintain the rental unit in a state of repair that complies with health, safety and housing standards required by law.

The Tenant also made an Application for the completion of repairs to the rental unit. I find the evidence shows the Tenant made this request to the Landlord – to an adequate and accurate degree – on July 26, 2022. I find that the Landlord undertook an inspection and then received

a quotation for the work involved in a reasonable period of time. The next step is actually having that work completed.

The Landlord acknowledged that there are repairs needed. I find this is even verified through the quotation they received. The Tenant disagrees with the amount of work involved as shown in the large cost on the quotation; however, this is immaterial. There is no alternative, and the Tenant is not in the position to put forth alternative means of getting that work completed.

I find the repairs needed are not due to deliberate damage or neglect by the Tenant here. I find the Tenant lived in the rental unit for quite some time, and they provided evidence on the catalyst event within the rental unit, which was a leak in the ceiling coming from the roof. It is plausible that plumbing issues accumulated and were just never repaired for quite some time.

I find the Landlord must complete the work as required to ensure the rental unit meets health, safety and housing standards. The Landlord did not provide for a timeline in which they will complete this work, though they did briefly state they had the need for a vacant rental unit in order to do so.

The hearing for this Tenant's Application took place approximately 1.5 months after the Tenant filed their Application. As of the date of the hearing, I find there was no plan in place by the Landlord to have the work completed. I find this presents an ongoing hardship for the Tenant. In line with this, I order a rent reduction of $100 per month going forward until the Landlord completes the needed work. This shall continue for each successive month until the work is completed. I will grant this $100 amount of reduced rent from September 2022 going forward.

I authorize a one-time reduction $300, to cover the $100 reduced rent for each of September, October, and November 2022. This is with regard to the Landlord having a quotation in place by mid-August, being thus aware of the need for work in the rental unit, yet not providing for a firm plan going forward.

I authorize the Tenant's rent reduction as follows:

- $300 for September – November 2022, reduced from December 2022 rent.
- $200 for December 2022 and January 2023, reduced from January 2023 rent.
- $100 for February 2023 onwards, from each successive month of rent going forward.

Going forward, the Tenant shall reduce each month's rent by $100 until the Landlord completes priority repairs as needed within the rental unit. I find the immediate priority for repair is a functioning sink, bathtub/shower, and toilet. Presumably these are issues resolved

with a certified plumber's visit. Following this, the window in the living area must be replaced or made functional. This was identified by the Tenant as needing replacement, and also indicated on the Landlord's quotation. I also find a functional oven range with a working fan is a priority for repair.

The $100 rent reduction remains in place until the Landlord has completed priority repairs listed above. If necessary, the Tenant may apply for dispute resolution to ensure the Landlord's compliance with this order.

The other items identified by the Tenant – some of which were verified by the Landlord obtaining a quotation – also require repair. They are not subject to the rent reduction going forward; however, they were identified as issues of repair in this hearing and similarly need addressing. This necessitates close communication and consultation with the Tenant on the priority of work needed within the rental unit. Ideally this would be an updated version of the July 26 notice to the Landlord.

In summary, the Tenant is entitled to a reduced rent both retroactively and going forward. I order this reduction in rent remains in place until the Landlord completes priority repairs as noted above. I order the Landlord to work with the Tenant to determine other repairs on an ongoing basis.

I find the Tenant was moderately successful in this Application. In line with this, I grant the Tenant reimbursement of $50, and authorize the Tenant to withhold the amount of $50 from their December 2022 rent payment, this in addition to the amount set out above.

Conclusion

Pursuant to s. 65 and s. 72 of the *Act*, I grant the Tenant a reduction in rent retroactively, and conditionally going forward. I order the Landlord to comply with the positive obligation to complete repairs in the rental unit.

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: November 23, 2022

Residential Tenancy Branch