



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1081386 BC Ltd
and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was reconvened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for a rent reduction - Section 65;
2. An Order for repairs - Section 32;
3. An Order for the Landlord’s compliance - Section 62;
4. An Order for the provision of services and facilities - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

At the original hearing it was confirmed that the only matter left to resolve is the Tenant’s claim for compensation and recovery of the filing fee. The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms receipt of the Tenant’s application and evidence. The Tenant confirms receipt of the Landlord’s evidence.

Preliminary Matter

The Parties agree to amend the application: the Landlord provides the correct name for the Landlord’s numbered company and the Tenant confirms that this name is the same name seen on the notices of rent increase. Given this agreement I amend the application to reflect the correct name of the Landlord.

Issues

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy of unit 102 started November 2004. Rent of \$1,313.41 on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit.

The Tenant states that in 2019 they noticed a soft spot in the flooring and immediately notified the previous manager. The Tenant states that the Landlord did not respond. The Tenant states that the spot continued to grow and that the Tenant continued to inform the manager. The Tenant states that in the summer of 2020 there was a new manager who was also informed of the spot. The Tenant states that the appliances began to sink in December 2021 and the Landlord then informed the Tenant that they would have to move out of the unit while repairs were made. The Tenant states that the Landlord estimated the work would take about 2 to 4 weeks to complete. The Tenants were given two vacant one-bedroom units to move into temporarily.

The Tenant states that the repairs started in the first week in January 2022 and was not completed until mid August 2022. The Tenant states that their family was separated during this time as they had to split up between the two units and because it was only supposed to be temporary, they did not have all their furniture and slept on mattresses on the floor. The Tenant states that the use of the living room for a sleeping area resulted in a loss of privacy. The Tenant argues that the Landlord was negligent in completing the repairs in a reasonable and that the Tenant was paying rent for a unit where the family could be together and not separated. The Tenant states that it was very stressful.

The Tenant states that the new flooring work was left uneven and that the kitchen cabinets were replaced with old cabinets that were rotten. The Tenant provides photos. The Tenant claims a rent reduction of \$6,567.05 as the equivalent of 5 month's rent for

the period January to June 2022 inclusive. The Tenant confirms that no amendment was made to increase the claimed amount.

The Landlord states that they only became aware of the problem on December 7, 2021. The Landlord states that the previous manager never raised any issue. The Landlord confirms that no statement was provided by the previous manager for this hearing. The Landlord states that on December 14, 2021 two adjacent units were prepared for the Tenant's use however a broken pipe was discovered in one of the units and the Tenants were given another unit a floor below. The Landlord states that the Tenants moved into those units on December 21, 2021 and that no two-bedroom units were vacant for the Tenant's use. The Landlord states that the repairs were started on January 6, 2022 by their handyman and another person.

The Landlord states that in April 2022 the Tenants asked for new cabinets and that the Landlord does not know how old they were but believes they were older than 10 years as the Landlord was told at the time of purchase of the building in 2016 that the cabinets were a year old at the time. The Landlord states that they agreed to replace the cabinets and that this was done on April 12, 2022. The Landlord states that they are also unsure when the cabinets were replaced. The Landlord states that on June 9, 2022 a leak was found in the kitchen ceiling. The Landlord states that repairs then had to be made to an upper unit leak. The Landlord states that both of their workers became ill with COVID at separate times for a couple of weeks in March and again in May 2022. The Landlord states that one of the workers has since left the Landlord's employ and the other worker does not speak good English so the Landlord did not provide any statement from these workers. The Landlord states that they could not have more than 2 workers at a time due to COVID and that the Landlord did not have the budget to obtain more workers. The Landlord also states that nobody wants to work for them and that they could not find anybody to work with the Landlord. The Landlord states that their manager left the job due to stress. The Landlord states that the materials required for the repairs were ordered in January 2022 and did not arrive until

June 2022. The Landlord states that the work was delayed due to the above issues and because the Landlord did not know the Tenant would make this application. The Landlord states that during the repairs of the unit other units also required repairs. The Landlord states that they made a poor investment in the building.

The Tenant states that the Landlord's workers were not professional, did a poor job on the flooring that was left uneven and that there was no COVID "lockdown" during the time of the repairs.

Analysis

Section 65(1)(f) of the Act provides 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 order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. The Landlord testifies that the text message from December 7, 2021 is the first time they became aware of the problem with the unit. A review of the text, provided by the Landlord of proof of this first notification, indicates that the Tenant refers to the spread of a spot and the Landlord does not question a spread of any kind in their response to immediately talk to the landlord of the "situation". This brings me to consider that the Landlord was already aware of the problem in December 2021. I note that the Landlord provided no evidence from the previous managers about the problem being unknown or unreported. For these reasons and given the Tenant's evidence of informing the Landlord in 2019 with no response by the Landlord, I find on a balance of probabilities that the Landlord was negligent in the maintenance of the unit leading up to December 2021 and that this negligence caused the Tenant's full loss of enjoyment of the unit.

Based on the Tenant's undisputed evidence that the Landlord subsequently informed the Tenant that the work was estimated to be done at least within a month and as the Tenant agreed to relocate to the other units for this period of time, I find that the

Landlord agreed to complete the repairs within a month barring any unforeseen circumstances. Given the Tenant's evidence of having noted one or the other worker being absent for some time I accept the Landlord's evidence that the work for March and May 2022 due to COVID and that the delay for these months was therefore reasonable in the circumstances.

The Landlord gives no supporting evidence that any supply delays were caused by COVID and no evidence that other supply options were investigated. There is no evidence that the Landlord was taken by surprise of the effects of COVID on the supply timeline. The Landlord's invoice for the repairs to the unit does not set out any hours or dates for the work done. For these reasons and given the Landlord's evidence of budget constraints and the history of neglect of the unit, I find on a balance of probabilities that the delays, other than the worker illness delays, were more likely caused by the Landlord's financial choices. Even if the Landlord faced or is facing financial difficulties, this does not change the nature of the Landlord's obligations under the Act or the tenancy agreement to the Tenant. As the Tenant was deprived of their family home without reasonable delay, and contrary to the Landlord's estimate for repairs to be done, I find that the Tenant is entitled to a retroactive rent reduction.

As the Tenant has not amended its application for a rent reduction past June 2022, I find that the Tenant is entitled to the claimed reduction for February, April and June 2022. While the Tenant seeks a reduction equivalent to the monthly rent paid, it is undisputed that the Tenant did have use of alternate accommodation for its family. However, as this accommodation failed to provide the family with a single suite and as I consider family separation to be a considerable loss of the use and enjoyment of the rental unit, I find that the Tenant has substantiated a loss of enjoyment of 50% of the unit and is therefore entitled to a rent reduction of **\$1,970.13** ($\$1,313.41/2 \times 3$ months equivalent). As the Tenant has been successful with this claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,070.13**. The

Tenant may deduct this amount from future rents payable in full satisfaction of this entitlement.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,070.13**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: December 8, 2022

Residential Tenancy Branch