Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as the result of the landlord's successful Application for Review Consideration.

This dispute began as a result of the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed and recovery of the cost of the filing fee.

On June 21, 2022, an arbitrator conducted the original hearing. At this hearing the tenant attended, and the landlord did not. The original arbitrator granted some of the tenants' application and granted them a monetary award of $9,539, with a monetary order in that amount being issued.

The landlord filed the Application for Review Consideration which resulted in a Decision by another arbitrator with the Residential Tenancy Branch (RTB), on July 5, 2022, granting the landlord a new hearing on the tenants' original application for dispute resolution. That Decision is incorporated herein by reference and should be read in conjunction with this decision.

Under section 82(3), following this new hearing, I may confirm, vary, or set aside the original Decision and order.

At this new hearing, the tenant and landlord's agent (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation from the landlord and recovery of the cost of the filing fee?

Should the original Decision be confirmed, varied, or set aside?

Background and Evidence

The tenancy began on December 1, 2003 and ended on September 18, 2021, when the tenants vacated the rental unit. The initial monthly rent was $842 and the monthly rent at the end of the tenancy was $1,217.65.

The tenants' monetary claim is below:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Mover's costs	$1501.50
2. Security deposit for next rental unit	$1450.00
3. Strata fee for next rental unit	$200.00
4. Prorated rent	$1256.66
5. 11.5 months losses	$7425.00
6. Extra laundry	$312.50
TOTAL	**$12,145.66**

The tenants' claim for $7425 is explained as 1.62/s.f. x 400 s.f. (bedrooms)=$648/month x 11.5 months. The laundry costs of $312.50 were given as $25/month x 11.5 months. The claim of $1,560 is explained as the security deposit $1,450 and strata fee of $200 for the tenants' next rental unit. The prorated rent of $1,256.66 is the prorated rent for having to move out as quickly as possible.

This dispute arose due to the tenant's claim of an ongoing water leak in the rental unit. The tenant stated that when the leak was reported, the landlord sent someone to fix the leak, but the leak started again the next day.

The tenant submitted a written package of evidence of 64 pages, providing a summary, timeline, and statement of claim, email and text message communication between the landlord and the tenant, photos, and receipts.

Some of the written statement of claim is reproduced as follows:

> I'm filing for the RTB hearing seeking monetary compensation because we were unable to use our bedrooms for 11,5 months due to the very strong smell of mold due to an ongoing leak. As you can see in the summary below, we were suffering for 11.5 months. We couldn't sleep in our bedrooms due to the very, very strong smell of mold.Each time someone came to check the leak I had to move everything from the master closet and put it back . We had to wash everything before we wore it due to the very strong smell of the mold. We were role model tenants for 17 years. Never caused any problems to management and neighbors. After 11,5 months of suffering, we couldn't take it anymore, we were forced to move out.
>
> It took that long because management didn't want to spend any money.If the wall was opened properly this could be solved long back in May when they first opened up the wall.. Management didn't follow up with us, every time I had to threaten them that I will file for RTB in order to get an update or movement on the project.
>
> First, we were told that the window will be replaced, waited for months, then we were told that we are no longer getting windows that leak from the exterior wall. Scaffolding was installed at the end of June and removed in Sep. We couldn't open the window during the summer heat wave . Then it turned out that there were neils in the pipes under the baseboards.

[Reproduced as written]

Additionally, the tenant provided a timeline which indicated an extended series of communications between the parties, with copies attached.

In the hearing, the tenant said they are asking for moving fees, strata fees, and prorated rent as they had to find something quickly, which caused them to incur these costs. The

tenant submitted the residential property was an old building that was selected for redevelopment, which she learned while being an employee with the landlord for a period of time.

The tenant said that they tried to negotiate with the landlord, but these attempts were unsuccessful. The tenant submitted the mold smell and asbestos exposure caused extra loads of laundry.

Landlord's response –

The landlord stated that they offered the tenants a suite transfer and the costs would have been born by the landlord. The landlord said it was the tenant's choice to move off premises and said that the tenants did not move into a comparable unit, as they moved from an apartment to a townhome.

The landlord submitted that the evidence filed was shown in draft form, and it was an error not to print the final versions. The landlord pointed out that the tenant's evidence shows the landlord regularly attended the rental unit and that the issue was not a case of negligence, but it took a long time to figure out what caused the issue.

The landlord said that they tackled the issue one step at a time, as they first thought it was a siding issue. The landlord did a water test and it was determined there was no leak and sometime later, the tenant reported a water leak. The landlord submitted that Covid caused delays with contractors and supplies.

The landlord said that the landlord chose not to open up larger sections of the wall as they attempted to locate the specific issue. The landlord said the siding project was a $30,000 expense. The landlord said the landlord is not an expert in these matters and could only take advice from the contractors.

The landlord submitted purchase orders and maintenance tickets.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I have carefully reviewed the documentary evidence of both parties as well as the oral evidence from the hearing.

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Where a tenant requests such repairs, I find the landlord must be afforded a reasonable amount of time to take sufficient action.

I have reviewed the considerable evidence from both parties before me and find that the issues in this dispute arose from leaks or water ingress into the rental unit. I find this event was unforeseeable and was not caused by landlord negligence or breach of the Act or tenancy agreement. I also find the tenant submitted insufficient evidence that the

landlord delayed in addressing the leak or water ingress. I find that the evidence of both parties showed that the landlord responded to the tenants' request for repairs in a timely manner. The tenants' evidence showed a consistent, prompt response from the landlord to the emails and texts from the tenant and the landlord's evidence showed tradespersons attending the rental unit. The tenants' evidence showed scaffolding around the exterior of the residential property, which I find supports that the landlord had work done on the exterior to attempt to locate the water source.

As to the tenants' claim of $7450 for partial loss of use of the rental unit, which I find amounts to a loss of value of the tenancy, I considered whether the tenants did whatever was reasonable to minimize the damage or losses, as required by Act. I find they did not.

I find a reasonable way to minimize a claimed loss is to take immediate steps to make the claim. In this case, the tenants said they suffered a loss of the bedrooms for 11.5 months. The tenant's evidence shows that they told the landlord they would file an application with the RTB while the matters were ongoing, yet they did not. Rather than file an application for repairs when the leak was not remedied immediately, the tenants continued to occupy the rental unit. I find it would have been reasonable to file an application with the RTB or vacate the rental unit within no later than 6 months. The tenant did not make their application for compensation until after the tenancy ended and the claim was allowed to build and grow.

For this reason, I find the tenants submitted insufficient evidence that they took all reasonable steps to minimize their losses required under section 7(2) of the Act.

I, however, determined that there has been an infraction of the tenants' right to full use of the rental unit. I find the tenants submitted sufficient evidence of large holes in the closet and mold and as a result, as I find that it was reasonable for the tenants to allow the landlord at least 6 months to remedy the issue. I therefore find the tenants are entitled to an award of a prorated reduction in rent for the first six months for loss of a portion of the rental unit, rather than 11.5 months.

I therefore find the tenants have established a monetary claim of $3,888, or $648 x 6 months.

I also find the tenants have established a monetary claim for laundry in the amount of $150, or $25 x 6 months.

As to the tenants' claim for moving expenses, I find these are choices the tenants made in ending a tenancy, on how to facilitate their moving, and I find the tenants have failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant. I also find the tenants were not required to move out by operation of the Act and I therefore dismiss their claim of $1501.50 without leave to reapply.

As to the tenants' claims for a security deposit and strata fee for another rental unit and prorated rent, I find the tenants submitted insufficient evidence that they were required to move. I do not find the tenants have submitted sufficient evidence that the landlord would be responsible for the expenses of the tenants after they chose to vacate the rental unit. As a result, I dismiss the tenants' claim for their security deposit of $1,450, strata fee of $200 and the prorated rent of $1,256.66, at another property, without leave to reapply.

As the tenants were partially successful, I grant the tenants recovery of their filing fee of $100.

For the above reasons, I therefore grant the tenants a monetary award of $4,138, consisting of $3,888, for prorated reduction in rent for six months, $150 for laundry costs, and the filing fee for $100 paid for this application.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $4,138.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are subject to recovery from the landlord.

Conclusion

As I have granted the tenants a reduced monetary award and issued the tenants a monetary order in a different amount, as a result, pursuant to section 82(3) of the Act, **I set aside the original Decision and monetary order (Order) issued on June 22, 2022** issued by another arbitrator. The Decision and Order of June 22, 2022 are set aside and of no force or effect.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 2, 2022

Residential Tenancy Branch