Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALEX REN RENTAL & PROPERTY MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on October 2, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- An order for the Landlord to make repairs;
- A rent reduction for repairs, services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 20, 2023, and was attended by the Tenant, an agent for the Landlord and a witness for the Landlord D.P. All testimony provided was affirmed. As the Agent acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

The parties were agreed that the stove/oven, which was the subject of the Tenant's claim for repairs, was replaced on November 7, 2022. As a result, the parties agreed that it was unnecessary to hear the Tenant's claim for repairs, as the issue has been resolved. As a result, the hearing proceeded based only on the claim for a rent reduction and recovery of the filing fee.

Preliminary Matter #2

Although the Tenant stated that the documentary evidence before me was sent to the Landlord by registered mail, the Agent stated that only the NODRP was received. As the Tenant could not provide me with either the registered mail tracking number or point me to any proof of what was contained in the registered mail sent, I find that they have failed to satisfy me on a balance of probabilities that the documentary evidence submitted to the Residential Tenancy Branch (Branch) for my consideration was properly served on the Landlord as required by the Act and the Rules of Procedure. I have therefore excluded it from consideration, as requested by the Agent, as I find that it would be administratively unfair and a breach of both the Act and the Rules of Procedure to accept it for consideration as I am not satisfied that it was served on the Landlord and the Agent argued that it would be significantly prejudicial to the Landlord to do so, as the Landlord had no opportunity to submit evidence for my consideration in response.

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction for repairs, services, or facilities agreed upon but not provided?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the Tenant notified the Agent in March of 2022 that the oven was not functioning correctly, as it was overheating and locking shut. While the parties disagreed about whether the oven was continually or periodically inoperable, there was no dispute between them that the oven was not functioning properly because it was overheating. The Tenant argued that they were not able to use the oven in any real or meaningful sense for more than 7 months, as it was a fire hazard, would lock shut when overheated, and would burn food. In contrast the Agent argued that the oven only periodically overheated and could be used at other times.

While the parties agreed that a sensor was replaced by the witness D.P. shortly after the Agent was made aware of the issue in an effort to resolve the problem, they disagreed about why this repair did not resolve the issue. The Agent argued that the oven continued to overheat because the oven vents were dirty and despite repeated requests that the Tenant clean them, the Tenants delayed doing so until a new oven had already been ordered. The Tenant disagreed stating that they cleaned the vents but the issue persisted, and that the Landlord had failed to act reasonably to either diagnose and fix the issue or have the stove replaced in a timely manner.

The parties agreed that the stove/oven combination was ultimately replaced on November 7, 2022, and when I asked the Agent why it was replaced since they were adamant that the oven was simply dirty, not broken, they stated that it was because the Tenant was “stubborn” about the issue and they deemed it to be a good idea given that the Tenant had filed the Application seeking its repair. When I asked the Agent if the oven was tested after the vents were cleaned by the Tenant and prior to its replacement to see if it was still overheating, they stated that it was not.

Analysis

I do not accept the Agent’s argument that although the stove was now functioning correctly after repairs, it was replaced because the Tenant was “stubborn” about their complaints related to the stove and because the Tenant had filed the Application. It is clear to me from the testimony of the parties at the hearing that at the very least, the oven was periodically inoperable due to the issue of overheating, if not entirely inoperable or unsafe to use. Although the Agent argued that reasonable steps were

taken by the Landlord to ascertain the cause of the issue and to resolve it, again I disagree. While I find that the Landlord initially took reasonable steps to have the oven looked at by the handyman D.P., and that a sensor was replaced as a result, the parties agreed that this did not ultimately resolve the issue. While the Agent and handyman blamed the Tenants, arguing that the vents simply needed to be cleaned to prevent overheating, the Tenant stated that this was done and did not resolve the issue. Further to this, it does not make any sense to me that the Landlord would incur costs to replace an allegedly fully-functioning stove/oven that simply needed to have the vents cleaned, because the Tenant was making multiple complaints and because the Tenant had filed the Application.

I find it more likely than not that the Landlord purchased a new stove/oven combination because the one in the rental unit was not functioning properly as argued by the Tenant and that they had simply avoided doing so prior to the Tenant's filing of the Application in an effort to avoid obligations under section 32(1) of the Act, and their associated costs. Further to this, I find that the Tenant and their family went more than 7 months without a properly functioning oven, despite repeatedly advising the Agent that the oven was not functioning, and requesting its repair, which I find to be an exceptionally long time.

Based on the above, and as I am satisfied that the Landlord breached section 32(1) of the Act by failing to have the oven properly repaired or replaced within a timely manner, I therefore grant the Tenant's claim for $100.00 in compensation for loss of use of the oven over the 7+ month time period, pursuant to section 7 of the Act. I also grant the Tenant recovery of the $100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenant a Monetary Order in the amount of **$200.00** and I order the Landlord to pay this amount to the Tenant.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **$200.00**. The Tenant is provided with this Order in the above terms and 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.

In lieu of enforcing the Monetary Order in Court, the Tenant is permitted to withhold $200.00 from the next months rent payable under the Tenancy agreement, after service

of the Order on the Landlord, should they wish to do so, pursuant to section 72(2)(a) of the Act.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: February 8, 2023

Residential Tenancy Branch