



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRT, MNDCT, DRI, RR, RP, LAT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order that the landlord make repairs to the rental unit pursuant to section 32;
- a monetary order for the cost of emergency repairs to the rental unit in the amount of \$600 pursuant to section 33;
- a determination regarding their dispute of a rent increase by the landlord pursuant to section 43;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,000 pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**NL**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and NL confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. NL testified, and the tenant confirmed, that the landlord served the tenant with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the tenant entitled to:

- 1) an order that the landlord make repairs;
- 2) a monetary order of \$3,600;
- 3) an order cancelling the landlord's rent increase;
- 4) an order to allow the tenant to reduce her rent;
- 5) change the locks to the rental unit; and
- 6) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant moved into the rental unit on July 1, 2019. At that time, another individual lived in the rental unit pursuant to a previous tenancy agreement. The tenant moved into because that individual's previous roommates had moved out, and there was an open bedroom in the rental unit. The tenant did not enter into a new tenancy agreement with the landlord. Monthly rent was \$1,678, of which the tenant paid \$825. In December 2019 or January 2020, the tenant's roommate moved out of the rental unit, and the tenant did not bring another roommate in. She has paid the landlord the full amount of monthly rent (\$1,678). I find that this amounts to an assignment of the tenancy agreement from the tenant's prior roommate to the tenant, which the landlord consented to.

The parties agreed that from October 2020 to June 2021, the landlord agreed to reduce the tenant's monthly rent to \$1,350 due to COVID-19. NL testified that the tenant paid \$1,350 in October and November 2020, \$1,000 in December 2020, \$1,200 for January to April 2021, and \$1,350 for May and June 2021. NL testified that there was never a formal conversation about duration of the reduction, and that it was more of a situation where the landlord would "take what they could get". In June 2021, the tenant advised the landlord that she had a job again, and NL testified that it reasserted its right to be paid the full amount of rent. The tenant resumed paying the full amount.

NL testified that the landlord raised the rent from \$1,678 to \$1,700 in January 2022, in accordance with the Act. The tenant does not dispute this rent increase.

NL testified that the landlord served the tenant with a notice of rent increase (Form #RTB-7) on September 19, 2022, which indicated that the landlord would be raising the tenant's rent from \$1,700 to \$1,734 as of January 1, 2023. The tenant acknowledged receipt of this notice and testified that this is the rent increase she is disputing.

She testified that she cannot afford another rent increase and that this increase is too much too often and represents a financial hardship.

The tenant testified that since the first day she moved into the rental unit, the toilet connected to her bathroom did not flush properly. She testified that it would get clogged if toilet paper was flushed. She notified the prior property manager of this, and a plumber came to the rental unit in August or September 2019. She testified that the plumber could not fix the problem, and the landlord ignored further requests to address the issue. She did not provide any documentary corroboration of this.

The tenant testified that she uses the rental unit's second bathroom exclusively now, and that the lack of having a private bathroom is a contributing factor to why she has not gotten a new roommate.

The tenant testified that she is "very short-sighted" and requires "proper light" to see properly. She testified that the kitchen light is "very important" and that the light levels in the kitchen are inadequate for over a year. She testified that she reported this issue to the landlord very early in the tenancy and that the landlord fixed the issue in late 2020 or early 2021 by changing the light bulbs in the kitchen.

The tenant also testified that the kitchen was dirty when she moved in and there is "lots of grease on the floor and on the stove top".

The tenant also testified that in November and December 2019, the kitchen faucet was "completely leaking". She testified that she repeatedly called the landlord and it did not send anyone to fix it. As such she and a friend had to fix it themselves. She seeks \$600 in compensation for the time spent making the repairs and the cost of supplies. She did not submit any documentation in support of this portion of her claim other than a single photograph of under the kitchen sink.

The tenant testified that the lock on the front door of the rental unit needs to be fixed as it is difficult to lock and it takes too much time in the morning for her to do so.

Additionally, she testified that she has used tape to permanently seal some of the kitchen cupboard doors, because it is ugly inside them and the interior is grease stained. She noted that in June 2022 one cabinet door fell off the wall, but the landlord fixed it right away.

She also testified that the door on the storage closet cannot be opened or closed properly. She provided no documentary evidence supporting this.

The tenant argued that she is entitled to a rent reduction due to all of the problems she has encountered at the rental unit and the lack of repairs made by the landlord.

NL testified that the tenant never told her the extent of the plumbing issue. She testified that the tenant brought it to her attention once, and that she arranged for a plumber to attend the rental unit to fix the toilet. She testified that the tenant never advised her that the issue was not resolved by the plumber.

Similarly, NL testified that the tenant did not advise her of the lighting conditions in the rental unit. She testified that when she attended it in April 2021, she saw that the lighting in kitchen was poor, and she sent an electrician to attend the rental unit. To the best of her knowledge, he fixed the problem by installing new light bulbs.

NL testified that she was first made aware of the issue with the lock on the door of the rental unit when the tenant made this application. She testified that she hired someone to attend the rental unit in November 2022 to check on the deadbolt and lubricate it with WD40. This individual advised her that the lock needed to be replaced.

She testified that she has tried to arrange a time with the tenant when a locksmith can attend the rental unit, but the tenant has told her that she is “too busy”. NL stated that she wants the tenant to be present when the lock is changed so she can be provided with a new key.

NL testified that she is not withholding repairs from the tenant, and that she sends contractors to address the tenant’s problems when she becomes aware of them. In support of this she submitted a work order from a building service company for the repair of the tenants kitchen cupboards as well as the electrical socket in the bedroom and hallway which may have been contributing to the lighting issues in the rental unit.

NL argued that the tenant did not communicate problems with the rental unit to the landlord in a timely manner, or at all, which is why they are not getting dealt with as they arise. She stated that, following the hearing, she will arrange for a plumber to attend the rental unit to fix the issue with the ensuite toilet.

The tenant seeks a retroactive reduction in rent in the amount of \$3,000 to compensate her for the loss of use of the ensuite toilet and the lights in the kitchen. She seeks an ongoing rent reduction of \$1,650 due to the unit being poorly maintained.

The tenant wants the locks on the rental unit door to be changed because it is “a little damaged” and she is uncertain who else has keys to it.

Analysis

1. Rent Increase

Section 42 of the Act sets out requirements for the timing and notice of a rent increase. It states:

Timing and notice of rent increases

42(1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;
 - (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.
- (2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.
- (3) A notice of a rent increase must be in the approved form.

The Notice of Rent Increase served on the tenant was in the approved form and was served more than three months prior to the date the increase would go into effect. The proposed increase was to take effect 12 months after the last increase.

Section 43(1) of the Act states:

Amount of rent increase

43(1) A landlord may impose a rent increase only up to the amount
(a) calculated in accordance with the regulations,

The *Residential Tenancy Regulation* (the “**Regulation**”) ties annual rent increase to inflation. However, in government of British Columbia overrode this amount, and ordered that rent increases in 2023 are limited to 2% in 2023. 2% of \$1,700 is \$34. As such, the landlord issued a rent increase in accordance with Act. The Act does not contain any hardship provision which would allow me to cancel this rent increase due to the tenant’s personal circumstances.

As such, I dismiss the tenant’s application to cancel the rent increase, without leave to reapply.

2. Monetary claim

The landlord does not dispute the tenant’s characterization of the overall condition of the rental unit. Rather, landlord disputes that the tenant advised it of this condition in a timely manner, so that it could make the necessary repairs.

Section 32 of the Act obligates a landlord to repair damage to the rental unit other than damage as a result of ordinary wear and tear. However, it is not reasonable to expect the landlord to repair damage that it does not know exists. The tenant has not provided any documentary evidence to corroborate her allegations that she advised the landlord of any repairs needed in the rental unit which the landlord ignored or delayed in making.

Rather, I accept NL testimony that she addressed any of the needed repairs as soon as she was made aware of them.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party.

Accordingly, the tenant must show it is more likely than not that she advised the landlord of the damage to the rental unit, and the landlord failed to act promptly. I do not find the tenant has done this. As such, I find that she has failed to act reasonably to minimize any loss she suffered as a result of the damage to the rental unit, or inoperable elements. Accordingly, I decline to order that the landlord compensate her any amount for failing to make any repairs or order that the tenants rent be reduced by any amount going forward.

I note that the cleanliness of the rental unit is not the responsibility of the landlord. If the interior of the cupboards or other parts of the kitchen are dirty or greasy, it is the tenant's responsibility to clean them. I accept that they may not have been clean when she moved in. However, as she was added as a tenant to an ongoing tenancy, I do not find that the landlord was obligated to clean the rental unit before the tenant moved in.

I also note that Policy Guideline 1 states that it is the tenant's, and not the landlord's, responsibility to change light bulbs. As such, I do not find that even if the landlord was aware of the lighting issue in the kitchen, it would be responsible for addressing the situation, as the landlord's undisputed evidence was that the issue was caused inadequate light bulbs.

The tenant has not provided any documentary evidence supporting her assertion that she incurred \$600 in expenses when making repairs to the faucet. Indeed, she has not provided any documentary evidence that she undertook these repairs herself, or that the faucet was not working properly. As such I declined to order that the landlord pay her any amount In connection with this expense.

3. Repairs

I accept the tenant's undisputed testimony that the ensuite toilet does not flush properly and that the front door of the rental unit is difficult to lock. Based on the evidence tendered by NL, I accept that the front door locking mechanism needs to be replaced.

As such, I order the landlord to replace the front door lock. The tenant must make herself available for this (so she can immediately obtain a copy of the key). If the parties cannot agree on a time to replace the lock before April 30, 2023, the landlord may select a time to make the repairs, advise the tenant of the time and how they will make the key available to her.

Based on the evidence presented at the hearing, I cannot say why the ensuite bathroom toilet does not flush properly. I do not know if it is a malfunction of the toilet itself, or a blockage of the pipes. I order the landlord to hire a plumber to attend the rental unit no

later than April 30, 2023 and determine what repairs are necessary to ensure that the toilet functions properly. This may include replacing the toilet itself.

4. Filing Fee

As the landlord has been substantially successful in this application, I declined to order that the landlord reimburse the tenant the filing fee. I dismiss this portion of her application without leave to reapply.

Conclusion

I dismiss the tenant's application for monetary compensation, for a rent reduction, and for the recovery for filing fee without leave to reapply.

I grant her application for the landlord to change the locks of the rental unit and repair the toilet and front door lock.

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: March 22, 2023

Residential Tenancy Branch