



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding R. JANG & ASSOCIATES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **RR, RP, PSF, FFT**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for:

An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to sections 27 and 65;

An order for repairs to be made to the unit, site or property pursuant to section 32;

An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27; and

Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Proceedings package and the amendment however stated he could not open the attachment. The tenant confirmed the only amendment sought was to change the amount of rent reduction sought from a half month’s rent to a full month’s rent for the duration of time he has been unable to occupy the rental unit. The landlord stated he understood the amendment and the hearing proceeded. The landlord did not submit any documents as evidence for this hearing.

Issue(s) to be Decided

Should the landlord be ordered to repair the unit or provide the facilities under the tenancy agreement?

Is the tenant entitled to a rent reduction for the duration of the time he has not been able to fully use the rental unit?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on April 1, 2021 with rent set at \$1,400.00 per month, payable on the first day of each month.

The parties agree that on or about November 19, 2022, there was a leak in the building, arising from the unit above the tenants. The tenant called the landlord and a week later, the landlord removed the drywall from the tenant's bedroom and removed the hardwood floors in the tenant's hallway and a portion of the bedroom. Beams and wires were also exposed.

Since the flooding, the tenant argues that the landlord has not advised the tenant of when the unit would be repaired. The state of the unit remains uninhabitable with all the tenant's possessions stacked in the living room and the bedroom fully empty. The walls remain open, and the floors remain partially disassembled.

The tenant testified that since the flooding, he doesn't fully occupy the unit but occasionally sleeps there. His possessions remain in the unit, and he is unwilling to move out. He has been paying full rent for the unit despite not being able to use it as living accommodation and seeks to recover all the rent he has paid since November 19, 2022.

The landlord testified that the leak happened in the unit above the tenant's and went from the 6th floor all the way to the first floor. A claim has been filed with the landlord's insurer and there has not been any movement. The scope of the claim is anywhere from \$250,000.00 to \$500,000.00. When the landlord has any information, he will pass it onto the tenant however at this point, the insurer has no update.

Many of the building's tenants have moved out and broken their fixed term leases due to their tenancy agreements being frustrated by the flood.

Analysis

Pursuant to section 32 of the Act, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Based on the photos of

the unit and the undisputed testimony of the tenant, I find the condition of the unit does not meet that standard and has not met that standard since November 18, 2022.

I accept the testimony of the landlord that the repairs to the unit are being coordinated and paid for by their insurer which makes it impossible for me to order that the repairs be done on an immediate basis. Together with the other units affected by the flood, the tenant must wait until the repairs are undertaken by the landlord's insurer. I dismiss, with leave to reapply, the portions of the tenant's claim seeking repairs to be made to the rental unit and for the landlord to provide services or facilities.

The tenant has been paying full rent for the rental unit, despite not being able to occupy it as a residence. Section 27 states:

Terminating or restricting services or facilities

- 27 (1)A landlord must not terminate or restrict a service or facility if
- (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b)providing the service or facility is a material term of the tenancy agreement.
- (2)A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a)gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b)reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Undeniably, a material term of the tenancy agreement would include the obligation to provide the tenant with safe housing. This would include unexposed pipes, walls and floors. A useable bedroom would also qualify as a material term of the tenancy. I have reviewed the photos of the unit and have considered the undisputed testimony of the tenant that the condition of the unit since the flood have made it unusable as a living space. Based on this evidence, I find that the tenant did not have use of facilities which he paid for, from November 19th onward.

The landlord did not reduce the rent, despite their failure to provide the tenant with the use of the rental unit as a living space. This is contrary to section 27(2)(b) of the Act.

As such, the tenant is entitled to a reduction in the rent equivalent to the reduction in the value of the tenancy agreement.

While the tenant seeks 100% of the rent returned and a future 100% reduction in the rent until he reoccupies it, the tenant provided no basis upon which he could justify it, other than continued inconvenience. I find that the tenant has partially continued to use the rental unit, despite not fully occupying it as a living accommodation. The tenant's possessions remain stored in the unit and the tenant testified that he occasionally sleeps there. Given the fact that the tenant has derived partial value from remaining in the tenancy, I find the reduction in the value of the tenancy agreement is not 100% but more closely aligns with a 75% reduction. [$\$1,400.00 \times 75\% = \$1,050.00$]

From the period of November 19, 2022 to April 30, 2023, (approximately 4.5 months) the tenancy has been devalued without a corresponding reduction in rent, I award the tenant \$4,725.00 pursuant to sections 67 and 27. [$\$1,050.00 \times 4.5 = \mathbf{\$4,725.00}$].

Pursuant to section 27, the tenant is to pay rent for the month of May, 2023 in the amount of **\$350.00**. As the landlord served the tenant with a Notice of Rent Increase, effective June 1st, the tenant is to pay rent in the amount of **\$356.75** from June 1, 2023 until the rental unit is fully repaired. [$\$1,427.00 \times 25\% = \356.75].

The tenant's \$100.00 filing fee will be recovered as the application was successful.

Conclusion

I award the tenant a monetary order in the amount of \$4,825.00.

Pursuant to section 27, the tenant is to pay rent for the month of May, 2023 in the amount of **\$350.00**. Effective June 1, 2023 until the rental unit is fully repaired, the tenant is to pay rent in the amount of **\$356.75**.

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: May 01, 2023

Residential Tenancy Branch