



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding 732 MOODY PARK RENTALS
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, PSF, OLC, FFT

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Tenant January 27, 2023 (the “Application”). The Tenant applied:

- To reduce rent for repairs, services or facilities agreed upon but not provided
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with S.G.F. to assist. D.H. also joined the Tenant later in the hearing for support. D.C. appeared at the hearing for the Landlord with Legal Counsel.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence. The only service issue related to a city bylaw; however, I have not addressed this further because neither party explained why the bylaw is relevant to their position and it is not clear to me why it is relevant. I have not considered the bylaw.

The parties were given an opportunity to provide relevant evidence and submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
2. Is the Tenant entitled to an order that the Landlord provide services or facilities required by the tenancy agreement or law?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant seeks orders and remedies against the Landlord regarding renovations to the rental unit and building. The parties attended a previous RTB hearing and came to a settlement agreement (File 741). The parties agreed the Tenant would move out of the rental unit, the Landlord would renovate the rental unit and building and the Tenant would move back into the rental unit and pay a higher rent amount. The Tenant did move out. The Landlord did renovate the building. However, the Landlord renovated the Tenant's rental unit to a lesser standard than all other units in the building. The Tenant says they also lost services and facilities they previously had when living in the rental unit. The detailed requests by the Tenant are as follows:

- The Tenant wants a reduction of past rent paid. The Tenant wants the difference between the rent they paid prior to renovations and the higher rent amount they currently pay based on the sub-par renovation and loss of services and facilities.
- The Tenant wants a future rent reduction. The Tenant asks that their rent return to the amount it was prior to the renovations, plus an allowable rent increase since that time, based on the sub-par renovation and loss of services and facilities.
- The Tenant wants an order that they be added to the intercom system.
- The Tenant wants an order that the Landlord provide a second set of keys.
- The Tenant wants permission from the Landlord to take out the stove and vanity in the rental unit and put in new ones, at the Tenant's expense.

The parties provided different copies of a written tenancy agreement. The parties agreed the written tenancy agreement provided by the Landlord is accurate. The tenancy started July 15, 2005, with a prior owner of the rental unit building.

Tenant position

The position of the Tenant is as follows.

The parties came to a settlement agreement at the previous hearing on File 741 about the Tenant moving out and the Landlord renovating the rental unit. The rental unit was not renovated to the standard the Tenant expected. The Tenant's expectations about the renovation were based on the Landlord's evidence provided for the hearing on File 741. Although the Landlord's evidence was not presented at the hearing, it was provided to the Tenant before the hearing. The Landlord's evidence detailed the work that would be done on the rental unit. The Tenant also relied on the Four Month Notice to End Tenancy (the "Notice") which was the subject of File 741. The Notice detailed the work the Landlord said they would do in the rental unit. It was only because of the renovations presented in the Landlord's evidence and Notice that the Tenant agreed to pay a higher rent amount of \$1,200.00 at the hearing on File 741. The Landlord did not do the renovations presented in the Landlord's evidence and Notice.

I do not have a copy of the Landlord's evidence on File 741. Legal Counsel objected to me looking at File 741 to see what evidence the Landlord provided because Legal Counsel had not seen it and could not address it. I have not looked at the evidence on File 741 because I find it would be unfair to the Landlord to do so. If the Tenant wanted me to consider evidence submitted on another file, the evidence had to be submitted on this file and served on the Landlord as evidence for this hearing.

A copy of the Notice is in evidence.

The settlement agreement reached between the parties is set out in the Decision on File 741 and will not be reproduced here. The Tenant acknowledged the settlement agreement does not set out a required or agreed upon standard for the renovation. The Tenant said I should consider the whole of the conversation and proceedings on File 741 to interpret the settlement agreement as being based on a required or agreed upon standard for the renovation. The Tenant said the Landlord did not make a distinction at the hearing for File 741 between the renovations they would do to all other units in the building and the renovations they would do to the rental unit. The Tenant says the

parties agreed the Tenant would pay \$1,200.00 per month in rent for a renovated rental unit and there was no agreement that the renovation would be sub-par. There is no recording of the prior hearing because of when it took place. The Tenant asked the RTB for a copy of the Arbitrator's notes, but these were not available. The Tenant relied on statements in evidence from D.H. and K.Y. about the discussions had at the hearing on File 741.

The Tenant submitted that no reasonable person would think the Landlord would renovate all other units in the building to one standard and the rental unit to a lower standard.

The Tenant argued that the Landlord replacing old items in the rental unit with old items is not actually a renovation at all. The Tenant said everything in the rental unit was past its useful life and some of the appliances are still past their useful life because the Landlord installed old appliances. The Tenant also outlined new issues in the rental unit since the renovations such as plugs that do not work and smells coming into the rental unit due to the vents installed.

The Tenant said the plans for the renovation, which were part of the permits, show units with washing machines, dishwashers and dryers but the rental unit does not have these. The Tenant relied on rental advertisement photos to show other units in the building were renovated to a higher standard than the rental unit. The Tenant provided photos of the renovated rental unit. The Tenant provided letters from family and friends about the sub-par renovation to the rental unit and loss of services and facilities.

The Tenant wants their rent reduced from the \$1,200.00 they agreed to pay in the settlement agreement, to the \$838.32 they were paying prior to moving out of the rental unit based on the sub-par renovation. The \$838.32 includes an allowable rent increase during the relevant time. The Tenant moved back into the rental unit after renovations on January 30, 2021.

The Tenant is also seeking a rent reduction based on a loss of services and facilities such as a bathtub, storage, intercom, closet doors, kitchen cabinets and a proper parking space. The Tenant submitted that these things were part of the tenancy agreement because they had them prior to moving out for the renovations. The Tenant said they require use of the intercom and a second set of keys for health and privacy reasons.

The Tenant provided evidence which I have reviewed and will refer to below as necessary.

Landlord position

The position of the Landlord is as follows.

The Landlord did the work outlined in the Notice. The Notice outlined internal work, not cosmetic work. The rental unit was renovated.

The Landlord and Tenant came to a compromised agreement at the hearing on File 741. Both parties had to compromise. The Tenant's rental unit was renovated differently than other units in the building because the Tenant negotiated a lower rent amount in the settlement agreement. Other units with similar layouts as the rental unit rent for \$1,800.00 per month. Further, the original tenancy agreement remained in place and the renovation complied with the original tenancy agreement. The original tenancy agreement included carpet in the rental unit. The original tenancy agreement did not include a dishwasher, washer, dryer or storage. The settlement agreement was not intended to provide the Tenant with additional things not included in the original tenancy agreement.

The statements provided by the Tenant do not acknowledge that the original tenancy agreement remained in place.

For the Tenant to have permission to change the stove and vanity, they would have to use trades people vetted by the Landlord.

If the Tenant wants additional services and facilities, such as a washer and dryer, the Tenant needs to enter a new tenancy agreement that includes these.

The Landlord will provide the Tenant a second set of keys if the Tenant pays a refundable deposit.

The Tenant does have a parking space in the renovated building.

I asked D.C. why they were taking issue with putting the Tenant in the intercom system when this issue is easily resolved and would seem to cost the Landlord no money and very little time. D.C. said they would put the Tenant in the intercom system by Tuesday,

May 23, 2023. The Tenant provided their phone number which I have noted on the front page of this Decision.

The Landlord agrees the Tenant had a bathtub prior to the rental unit being renovated but a bathtub no longer fit in the bathroom of the rental unit given the renovation work.

The Landlord and Legal Counsel acknowledged the Tenant had a storage locker prior to moving out of the rental unit for the renovations. The Landlord and Legal Counsel did not know the details of this and said the previous landlord gave the Tenant storage outside of the tenancy agreement.

The Landlord and Legal Counsel said the settlement agreement itself is what I should consider and not the discussions leading up to the agreement because these were negotiations and the final agreement is as set out in the settlement agreement.

The Landlord provided written submissions and evidence which I have reviewed and will refer to below as necessary.

Analysis

The Tenant as applicant has the onus to prove they are entitled to the orders and remedies sought (see rule 6.6 of the Rules of Procedure). The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Past and future rent reduction based on sub-par renovation and loss of services and facilities

Section 65(1)(f) of the *Residential Tenancy Act* (the “*Act*”) allows for a past or future rent reduction by an amount equivalent to a reduction in the value of a tenancy if the landlord has not complied with the *Act*, *Residential Tenancy Regulation* (the “*Regulations*”) or tenancy agreement.

It is clear from the evidence that the Landlord renovated the rental unit to a lower standard than the rest of the building. The Landlord and Legal Counsel acknowledged this. Legal Counsel acknowledged the Landlord did this because the Tenant does not pay market rent.

I accept based on the evidence that the Landlord renovated the rental unit because I am satisfied work was done in the rental unit. The Tenant acknowledged work was done in the rental unit. I do not agree with the Tenant that replacing items in the rental unit with used items is not a renovation.

I have read the Notice and am not satisfied based on the evidence that the Landlord did not do the work outlined in the Notice. The Notice mostly refers to internal work and removing or setting up aspects of the rental unit. The Notice does not address cosmetic upgrades and does not clearly state what appliances or furnishings will be in the renovated units.

The settlement agreement between the parties did not set out a standard of renovations required or agreed upon. The Tenant acknowledged this. It is the actual settlement agreement and wording that I must consider and not the discussions leading up to it. I do not find it appropriate to consider the discussions leading up to the settlement agreement when I do not have a recording of the discussions. Further, I agree with Legal Counsel that the discussions were negotiations and the final agreement is as set out in the settlement agreement. I do not find it appropriate to infer terms or conditions that were not explicitly set out in the settlement agreement.

I agree with the Tenant that no reasonable person would expect the Landlord to have done what they did and renovate the rental unit to a lower standard than every other unit in the building. I agree with the Tenant that what the Landlord has done is unreasonable. However, I do not find that the Landlord has breached the settlement agreement, *Act*, *Regulations* or tenancy agreement because none of these set out a standard to which the Landlord had to renovate the rental unit. Given this, I am not satisfied the Tenant is entitled to a rent reduction based on the sub-par renovation of the rental unit.

In relation to loss of services and facilities, the Tenant spoke about losing a bathtub, storage, intercom, closet doors, kitchen cabinets and a proper parking space.

Section 27 of the *Act* states:

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...

(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.

Services and facilities are defined in section 1 of the *Act* and include appliances, furnishings, storage, intercom systems and parking. I find a bathtub, storage, intercom, closet doors, kitchen cabinets and a proper parking space to be covered by the definition of services and facilities in section 1 of the *Act*.

There is no issue that the Tenant previously had a bathtub and no longer has one after the renovation. I accept the Landlord could not install a bathtub due to the renovation and resulting lack of space. However, a bathtub was something the Tenant had under the tenancy agreement and was part of what the Tenant rented. Loss of the bathtub entitles the Tenant to some compensation. Having a valid reason for removing the bathtub does not mean the Landlord does not have to compensate the Tenant for the loss. Based on the testimony and evidence of the Tenant, I accept the loss of a bathtub reduced the value of the tenancy for the Tenant. The Tenant is entitled to a rent reduction. I reduce rent by **\$20.00 per month** for this issue because I find this acknowledges the loss and the Tenant has not provided a convincing basis for a higher reduction.

I accept the Tenant had storage in the building since 2005 until they moved out for the renovations because the evidence supports this and I did not understand the Landlord to dispute this. I find storage was an implied term of the tenancy agreement, or became part of the tenancy agreement, because the Tenant had storage for so many years. I acknowledge storage was not included in the written tenancy agreement but this does not mean storage could not have become part of the tenancy by agreement or the conduct of the parties. I accept the Tenant no longer has storage and that this devalues the tenancy. I reduce rent by **\$75.00 per month** because the Tenant would pay at least this amount for separate storage outside the building.

I accept the Tenant previously had use of the intercom system because the Tenant's evidence supports this and I did not understand the Landlord to dispute this. I accept the Tenant has not had use of the intercom system since moving back into the building January 30, 2021, and note the Landlord did not dispute this. There is no reasonable basis to have kept the Tenant out of the intercom system. D.C. agreed to put the Tenant in the intercom system by May 23, 2023. I accept the absence of an intercom system from February 01, 2021, to May 23, 2023, was very inconvenient and devalued the tenancy. I reduce rent by \$20.00 per month from February 2021 to May 2023. The Tenant can deduct **\$540.00 from one rent payment.**

It is my understanding from the evidence that the Tenant has a parking space and simply does not like the space. I am not satisfied based on the evidence that the space is not suitable as a parking space and I find the Tenant has not lost a parking space.

In relation to closet doors, I accept the Tenant had closet doors prior to moving out of the rental unit for the renovations because the Tenant's evidence supports this. I accept the Tenant no longer has closet doors based on the photos in evidence. The Landlord cannot remove common items from the rental unit such as doors. This devalues the rental unit. I reduce rent by **\$15.00 per month** for this issue given the nature of it.

In relation to kitchen cabinets, the issue is the absence of shelves. I accept the Tenant previously had shelves and no longer had shelves after the renovation because the Tenant's evidence supports this. The Tenant's evidence shows they had to purchase shelving themselves. Again, the Landlord has removed items which were part of the rental unit and made the rental unit usable. The Landlord has devalued the rental unit. I reduce rent by **\$10.00 per month** for this issue given the nature of it.

In summary, under section 65(1)(f) of the *Act*, the Tenant can:

- Deduct a one-time amount of **\$540.00 from one future rent payment.**
- Deduct a one-time amount of **\$3,240.00 from future rent payments** (\$120.00 per month from February 2021 to May 2023 for loss of services and facilities).
- Deduct **\$120.00 from rent each month** starting June 01, 2023.

Intercom System

Section 62 of the *Act* states:

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

D.C. said they would put the Tenant in the intercom system by Tuesday, May 23, 2023. The Tenant provided their phone number which is noted on the front page of this Decision. **At the hearing, I ordered D.C. to put the Tenant in the intercom system by May 23, 2023.** If the Landlord does not comply with this order, the Tenant can seek further compensation from the Landlord.

As said to D.C. during the hearing, these types of issues should not have to come before the RTB to be resolved. There is no reasonable basis to keep the Tenant out of the intercom system and D.C. should have dealt with this long before the hearing.

Second set of keys

Section 62 of the *Act* applies.

I accept the Tenant previously had two sets of keys and now only has one set of keys based on the Tenant's evidence. I did not understand the Landlord to dispute this. I find having two sets of keys was an implied term or became part of the tenancy agreement over the years. **The Landlord is ordered to provide the Tenant with a second set of keys for the rental unit and building with no deposit and at no extra cost to the Tenant by June 09, 2023.** If the Landlord fails to comply with this order, the Tenant can seek further compensation for this issue.

Permission to replace the stove and vanity

Section 62 of the *Act* applies.

I decline to order the Landlord to give the Tenant permission to replace the stove and vanity in the rental unit. The Landlord has no obligation to allow the Tenant to replace items in the rental unit. The Tenant has not shown that the items are not working such

that the Landlord has an obligation to replace them. The Tenant has not proven a breach by the Landlord.

However, I suggest the parties communicate about this issue and try to resolve it. This seems to be a very minor issue that again would cost the Landlord no money and very little time. It seems the Landlord is simply punishing the Tenant for moving back into the rental unit after renovations and paying below market rent which is creating issues that do not need to become issues. There seems to be no reasonable basis for the Landlord to not allow the Tenant to replace items in the rental unit at their own expense if reasonable guidelines are followed.

Filing fee

The Tenant is awarded the \$100.00 filing fee under section 72(1) of the *Act* for being successful in the Application. The Tenant can deduct **\$100.00 from one future rent payment** under section 72(2) of the *Act*.

Conclusion

The Tenant can:

- Deduct a one-time amount of **\$3,880.00 from future rent payments.**
- Deduct **\$120.00 from rent each month** starting June 01, 2023.

The Landlord is ordered to:

- Put the Tenant in the intercom system **by May 23, 2023.**
- Provide the Tenant with a second set of keys for the rental unit and building with no deposit and at no extra cost to the Tenant **by June 09, 2023.**

If the Landlord does not comply with the above, the Tenant can seek further compensation from the Landlord through the RTB.

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: June 02, 2023