Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OLC, FFT

Introduction

The Tenants (hereinafter, the "Tenant") filed their Application for Dispute Resolution (the "Application") on February 9, 2023. They seek the Landlord's compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on June 2, 2023.

Both the Tenant and the Landlord's agent (hereinafter, the "Landlord") attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present affirmed testimony during the hearing. Both the Landlord and the Tenant confirmed they received the documentary evidence of the other.

Preliminary Matter – amended issue on Tenant's Application

The Tenant applied for the Landlord's compliance with the legislation and/or tenancy agreement. This concerned an issue of repair/maintenance in the rental unit, and the work was completed prior to this hearing. I find there is thus no ongoing issue of the Landlord's compliance with the *Act*/tenancy agreement in relation to this completed work.

I examine the issue, as set out below, in terms of whether the Landlord breached any part of the *Act* and/or the tenancy agreement during that process of repair/maintenance. This is in order to examine the Tenant's claim for compensation that they raised in the hearing. In line with this, I have amended the Tenant's Application by adding the issue

of compensation, which necessarily examines whether the Landlord did not comply with the *Act*/tenancy agreement. My amendment of the Tenant's Application is authorized by s. 64(3) of the *Act*.

Issues to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In the hearing I confirmed the basic information about the tenancy agreement in place between the parties. The tenancy, as printed in the agreement, started on November 15, 2022. The rent amount is $2,400, as indicated by the Tenant on their Application.

The agreement provides the Landlord and Tenant obligations on repairs and maintenance. The agreement also provides specifics on the Landlord's entry into the rental unit.

In the hearing, the Landlord pointed to the particular email address for service set out on page 7 of the agreement.

On their Application, the Tenant provided the statement:

> The landlord decided to install Air Conditioner in the unit. we agreed to accommodate contractors for 2 days as it was promised. however, we have been living with open walls and strangers coming into the unit for 2 weeks. owner rejected to elaborate the schedule or give any firm explanation. obviously the quiet enjoyment part of the agreement was breached. not to mention owner's agent refused to talk to me

In the hearing, the Tenant summarized the work involved in the air conditioner installation. On January 25, the installer came to the rental unit and cut holes in the walls. The installer "then decided an electrician was needed." The Landlord then hired contractors to close the walls, and "then quite a few other things." The contractor hired to complete work on the walls came for this work throughout February, eventually

finishing the work on March 1st. The Tenant provided pictures in their evidence of the work involved.

Also in the Tenant's evidence is their communication with the Landlord from January 27, noting "quite a significant inconvenience" by January 27, meaning "we cannot use the place due to open walls, we don't have any privacy, place needs to be cleaned each time after their visit", and "not able to stay home everytime [the contractors] need to do something". The Landlord replied, noting their priority of calling the electrician. Communication was strained from February 1st onward, with the Tenant and Landlord becoming more positional in the matter of the parties to communication, and basic landlord-tenant rights and obligations.

The Tenant stated, at one point: "I'm the customer and have a right of full service."

In the hearing the Tenant stated the work that continued through the month of February was "not everyday, but at least 2 times per week." They stated that delays in the work were not unreasonable, and agree that the Landlord tried to speed up the process. Their key problem was unclear communication from the Landlord. The handyman would visit to repair the bedroom wall and then realize that more work was needed, this required refinishing and repainting a few times. Each visit meant the Tenant had to move their furniture.

The Tenant did not specify an amount of compensation on their Application. When I questioned the Tenant about their need for compensation, they stated that they "believe it's fair to compensate for the time we had to adjust our life." They stated that an appropriate amount for this was the full amount of rent for the month of February when the work was undertaken.

In the hearing, the Landlord presented that they were surprised after the air conditioner installation on the need for an electrician. The installer was going to repair/replace drywall; however, this job fell to the Landlord's own handyman who could complete the job more expediently. The Landlord noted the handyman's own communication with the Tenant (as appears in the Landlord's evidence) "seems pretty smooth" and the handyman reported back to the Landlord that the Tenant was "not in a hurry" (as texted by the Tenant to the handyman on February 14).

The Landlord emphasized they were not delaying anything on purpose. They accepted the higher quoted amount with the use of the handyman in order to get the job completed faster. The Landlord pointed to a February 5 message from the handyman

to the Landlord stating that the Tenant reported they were happy with the handyman's work.

The Landlord also reiterated that they responded to the Tenant's queries right away, and "never skipped explaining things." They re-stated that the primary contact was listed in the tenancy agreement, and given the harsh messaging from the non-listed Tenant, they needed to maintain communication only with the use of that specified contact email address.

In their evidence, the Landlord provided a timeline of events, highlighting the following:

- January 25-26: air conditioner installed
- January 27: Tenant reported that electrician did not attend, so Landlord called repeatedly and the only next available day for the electrician to visit was the following week February 1
- January 28: the Landlord confirmed the installer could not provide a timeline for refinishing the wall, so the Landlord approved the quote for the handyman to finish that job, assigning the handyman for February 1
- February 1: the electrician completed their work and the handyman started drywall work – the Tenant complained about the delay on this date
- February 5: handyman notified Landlord that the drywall was closed, and only required painting

The Landlord wrote (with emphasis) the following two points:

- the installer informed the Landlord of the initial 2-3-day timeline, and that is what they reported to the Tenant – this was an estimate, and not a guarantee
- they made "numerous phone calls and text messages to coordinate and push each [of the tradespeople] to work on a timely fashion, updating the owner and get things going ASAP", and stressed to all workers involved to minimize disruption and dust.

As further proof, in their evidence the Landlord provided copies of all communication via text message with the handyman-Tenant and handyman-Landlord, as well as the Landlord's quote approval process. They provided a copy of the invoice they paid for the handyman's work, showing the actual work listed.

The Landlord also provided a written statement from the owner of the rental unit. This noted the Landlord's installation of an air conditioner for the Tenant's own comfortable

living environment. They did not know initially about the need for an electrician to visit to reconnect power. They noted the Landlord's own efforts during this process, "trying to arrange and find the best solutions."

Analysis

The Landlord's obligation to provide and maintain a residential property in a suitable state of repair is set out in s. 32 of the *Act*. This is a state of decoration and repair that "complies with the health, safety and housing standards required by law", and suitability for occupation by a tenant.

The *Act* s. 28 protects a tenant's right to quiet enjoyment. This includes reasonable privacy, freedom from unreasonable disturbance, and exclusive possession subject only to a landlord's right to enter.

Broadly, s. 67 of the *Act* grants an arbitrator authority to determine an amount of compensation owing to a party for the other's breach of the tenancy agreement/Act, and order that the party not in compliance pay the other party. This may take the form of a reduction in rent, or an order for compensation.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. To be successful in a claim for compensation for damage or loss an applicant has the burden to provide sufficient, compelling evidence to establish all of the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

I find that overall, the Tenant did not show a breach by the Landlord; that is, there was no violation by the Landlord of the *Act*, any regulation, or the tenancy agreement. I find the Tenant is thinking of themself as a consumer, or customer, in this instance, asking for a "right of full service." When challenged by the Landlord's direct explanation of the matter, the Tenant chose to entrench themself in this position, referring to their rights under the *Act* that were marginally correct at every step in this process.

An example of this is the Tenant's use of the term "quiet enjoyment". I find at no time was there an interruption to the Tenant's quiet enjoyment. The Landlord neither caused nor exacerbated any delay or difficulty with the work involved in having the air conditioner installation finalized. At most, this was an inconvenience to the Tenant, and the Tenant did not provide sufficient evidence or testimony to show that any breach of any of their contractual rights occurred.

The Tenant did not present details of any difficulty to them in terms of dates and times, or any specific interruption to their schedule or other inconvenience to them. Without this kind of detail, I find there was no breach of the Tenant's right to quiet enjoyment, which is the term of choice they used to describe the situation. Their text messages with the handyman who was attending to complete refinishing of the wall appears cordial. Also, the timeline of the entire amount of work, occurring on 2 or at most 3 days per week, within one month, is not oppressive or otherwise daunting as the Tenant submits.

While the Tenant cited the lack of information from the Landlord regarding completion of work, *i.e.*, a schedule, I find there was at no point a lack of communication from the Landlord. When pressed, the Landlord explained the situation from their perspective and the Tenant appeared to have not agreed with that. To ease some strain of communication, the Landlord turned to the specific means of communication as set out in the tenancy agreement; I find this does not represent the Landlord shutting down on communication with the Tenant. I find the Landlord appealed to the owner to approve extra funds for a faster resolution to the situation, which represents the Landlord attempting to mitigate the impact to the Tenant.

In no way is the Tenant entitled to the full amount of rent for the period of February 2023, nor even a nominal portion thereof. That would imply the Tenant had no access, or limited access, to the rental unit, or some diminished rights in regard to this tenancy for that time, which most definitely was not the case. I find there was an inconvenience to the Tenant, with trivial deficiencies in the work involved, and when they were not satisfied with the Landlord's explanation, they chose to inflame the situation by

asserting their rights in this tenancy were somehow breached, which is entirely specious.

In sum, I dismiss the Tenant's Application in its entirety. This was a complaint on a minor problem, associated with a relatively high standard of living, out of scope with the intention and purpose of the *Act* and the remedies it allows for. I find the work was completed efficiently, and the Landlord facilitated this as expediently as possible.

The Tenant was not successful in this Application; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss the Tenant's Application in its entirety, without leave to reapply.

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

Dated: June 4, 2023

Residential Tenancy Branch