

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

and the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Packages and are duly served in accordance with the Act.

Service of Evidence

I find that the Landlord(s) acknowledged service of the Tenant's evidence and are duly served in accordance with the Act.

I find that the Tenant(s) acknowledged service of the Landlord's evidence and are duly served in accordance with the Act.

Issues to be Decided

Is the Tenant entitled to an order regarding the Tenant(s) dispute of an additional rent increase by the Landlord?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Facts and Analysis

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Is the Tenant entitled to an order regarding the Tenant(s) dispute of an additional rent increase by the Landlord?

A copy of the tenancy agreement was provided, and both parties agree that there is no mention of parking in said tenancy agreement. Both parties further agree that the Tenant signed separate lease agreements for a parking spot. Copies of these agreements were provided, and the Tenant's rental unit is not mentioned in the parking agreement in any way beyond as a contact address for the Tenant.

Section 2(1) of the Act states the Act applies to tenancy agreements, rental units and other residential property.

Section 1 of the Act defines "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. A "rental unit" is defined, in section 1 of the Act, as living accommodation rented or intended to be rented to a tenant.

A parking spot is not a rental unit as defined under the Act, and therefore, the lease agreement for the Tenant's parking spot is not a tenancy agreement under the Act. Therefore, I find I have no jurisdiction and I decline to hear this matter.

For the above reasons, the Tenant's application for an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act is dismissed without leave to reapply.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was not successful in the application to dispute the additional rent increase, the Tenant's application for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Is the Tenant entitled to an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Both parties agree that the flooring in the rental unit was removed on March 7, 2024, because of water damage caused by flooding next door. The Tenant provided pictures of the rental unit showing just a bare concrete floor throughout the rental unit.

Both parties agree that new flooring is now in the process of being installed and should be done by the end of July 2024.

The Tenant provided a Monetary Order Worksheet requesting a %50 rent reduction for the months of March to June of 2024, an amount of \$4961.78, and compensation of \$169.88 for the use of fans and dehumidifiers he affirms were mandated by the HOA.

When asked how he had arrived at the %50 amount, he referenced a provided receipt for a rented rental unit. The receipt is for March 6 to April 6 of 2024, in the amount of \$294.00. The Tenant affirms still having the storage unit and that the ongoing monthly fee is \$239.40. The Tenant provided a copy of an email from the Landlord, dated March 4, 2024, that states, "The owner insurance is ordering to remove all the content inside to facilitate the work. Please remove your content ASAP... We have done as much of the emergency work as possible with the contents in the unit. In order to proceed, we will need the contents removed and it is recommended that the tenants move out while this work is happening." The Tenant affirms moving his belongings into storage as requested by the Landlord, and the lack of immediate access to his belongings, has caused hardship.

The Landlord previously filed for dispute resolution for an Order of Possession because the rental unit appears uninhabitable due to events out of my control and the tenancy agreement is frustrated. This was dismissed in file numbers 910145732 and 910147299. A copy of the decision was provided by the Tenant and the Landlord confirms the results.

The Tenant further referenced a provided copy of an invoice from a restoration company with an amount of \$169.88 for the rental use of three fans and 3 dehumidifiers, that he affirms were mandated to be used by the Strata, over an 18 day period, February 29, 2024 to March 12, 2024. The Tenant affirms these fans were loud and he rearranged his schedule to travel for work as much as possible during this time instead of working from home as he normally does due to the noise.

I find the Tenant has provided sufficient evidence, supported by the Landlord's attempt to have the tenancy declared to be frustrated, that under section 27 and 65 of the Act I find the Tenant is entitled a reduction in rent for the period of March to June of 2024.

For the above reasons, the Tenant's application for an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act is granted. However, I find the amount requested to be excessive. I find a more reasonable amount to be \$2000.00, \$500.00 per month for each of the four months.

Is the Tenant entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement?

Both parties agree that the Landlord has an automated system that, on the first day of the month, sends tenants an email asking them to confirm they will be continuing their

tenancy, or if they plan to vacate their rental unit that month. This is regardless of whether or not rent has been paid for that month. Both parties further agree that if tenants do not respond to the email, an automated text message is sent to tenants asking the same question and for confirmation.

The Tenant provided copies of a text message and three emails, all from the Landlord, supporting this.

The Tenant affirms that these repeated messages disturb his quiet enjoyment and make him feel that the Landlord is pestering him to end the tenancy despite regularly paying rent early. The Landlord affirms they are used to ensure aware of tenants' intentions as they sometimes forget to inform the Landlord of their intentions to vacate.

The emails from the Landlord, provided by the Tenant, show an unsubscribe option. The Tenant affirms attempting to unsubscribe, and provided a copy of an email response, dated April 1, 2024, to the Landlord's emailed inquiry of the same date.

The Tenant provided copies of two further automated emails he received on May 1, 2024, and June 1, 2024, requesting confirmation of his intentions regarding his tenancy despite his unsubscribing attempts. The Tenant affirms not receiving any communication regarding his tenancy in July 2024.

The Landlord affirms that the automated system has been updated and that the previous messages sent after the Tenant's attempt at unsubscribing were glitches that have hopefully been resolved.

Section 28(b) of the Act states a tenant is entitled to quiet enjoyment including, but not limited to freedom from unreasonable disturbance. I find that an automated system that emails and texts tenants monthly to inquire whether they intend to continue their tenancy, even when there is no unpaid, or late, rent, may be viewed as an unreasonable disturbance, particularly when said system requires a monthly action, the response, from the tenant.

Although it appears the Tenant has been successfully unsubscribed from the system, I order the Landlord to keep the Tenant unsubscribed, and to only send the automated emails and texts to the Tenant if written permission to do so is obtained from the Tenant.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the Tenant was successful in their application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2100.00** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for reduced rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act	\$2000.00
authorization to recover the filing fee for this application from the Landlord under section 72 of the Act	\$100.00
Total Amount	\$2100.00

The Tenant may deduct the full amount of the Monetary Order from their future rent.

I order the Landlord to keep the Tenant unsubscribed from the automated email/text system, and to only resume the automated emails and texts to the Tenant if written permission to do so is obtained from the Tenant.

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: July 18, 2024

Residential Tenancy Branch