DECISION

Introduction

This hearing dealt with the Tenant's joined Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act).

The Tenant's primary application is for:

- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided
- an order for the Landlord to make repairs to the rental unit

The Tenant's secondary application is for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement

Service of Documents

Primary Application

Rules of Procedure Rule 3.1 says the hearing package, and all evidence submitted at the time of application, must be served by the Applicant to the Respondent within 3 days of the hearing package being provided to the Applicant.

Rule 3.5 says if the applicant cannot demonstrate that each respondent was served as required by the Act and the Rules of Procedure, the arbitrator may dismiss the application with or without leave to reapply.

The Tenant claims they served the Landlord with their hearing package and some evidence by registered mail on June 17, 2024. The Landlord testified that while they received the mailed package, the hearing package provided was incomplete and the Landlord only received the first two pages.

The remaining pages not provided to the Landlord include the application information and types of claims, and how to call into the proceeding. The Tenant emailed the Landlord a copy after the Landlord informed them that service was incomplete, but this

email was sent outside the service deadline under the Rules of Procedure, and the Landlord does not accept service by email.

I find the Tenant failed to serve the Landlord with the hearing package for this proceeding in accordance with section 89 of the Act, and Rules of Procedure 3.1. In accordance with Rule 3.5, I dismiss the Tenant's primary application, with leave to reapply.

I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable time limits under the Act.

Secondary Application

The Landlord acknowledged being served with the Tenant's hearing package and evidence in person on July 9, 2024. The Tenant acknowledged being served with the Landlord's evidence by registered mail sent on July 17, 2024.

Preliminary Matter

The Tenant's secondary application includes a request for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement. The application states the Landlord has failed to provide a rental unit suitable for occupation by a Tenant.

The Tenant testified that since the application was filed, the required repairs have been completed, and they are living in the rental unit again at the time of the hearing. The Tenant testified that the rental unit is suitable for occupation, so this part of the application is no longer applicable.

For these reasons, the Tenant's application for an order requiring the Landlord to comply with the Act, regulation or tenancy agreement is dismissed, without leave to reapply.

Issue to be Decided

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement?

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.

This tenancy began on July 15, 2023, with a monthly rent of $1,700.00, due on the first day of the month, with a security deposit of $850.00.

The Tenant testified as follows. On June 9, 2024, the toilet in the unit above the Tenant's rental unit was broken and flooded the Tenant's rental unit. The Tenant claims that water was pouring from the ceiling, through light fixtures and the ceiling smoke alarm. The carpet in the rental unit was soaked through and sloshy. When the Tenant reported the flood, the building caretaker attended and assumed the water was clean water.

The Tenant continued to live in the rental unit, and put tarps over the saturated carpet in the affected areas of the rental unit. On June 11, 2024, the Tenant noticed that the flood water still present in the rental unit started to smell really bad. The Tenant purchased a water test kit and found that the water contained raw sewage. The Tenant reported this to the Landlord.

On June 12, 2024, a restoration technician attended to inspect the site and the flood, and measure the saturation levels of the walls, ceiling, and floors. The restoration work began on June 14, 2024, and the Tenant was instructed by the technician to move their furniture and belongings from the flooded areas of the rental unit to the unaffected areas while the work was completed. The Tenant was instructed by the Landlord to find alternate accommodation while repairs were completed.

The Tenant moved out on June 15, 2024, and returned when the repairs were mostly completed on July 22, 2024. The repairs were fully completed on July 24, 2024. The Tenant paid the full amount of rent for the months of June and July 2024. The Tenant claims $2550.00 for their loss of use of 100% of the rental unit for the period of June 15, 2024, to July 22, 2024.

The Tenant provided photos of the saturated carpets in the rental unit and written submissions as documentary evidence to support their claims.

The Landlord testified as follows. The Landlord responded to the Tenant's report about the flood immediately. The Landlord contacted service master for flood remediation work on June 9, 2024, and they attended as soon as possible on June 12, 2024. The Landlord was efficient and responsive and arranged for remediation work to start as soon as possible on June 14, 2024.

The flood remediation work was completed from June 14 to June 25, 2024. The repair work was completed from June 25 to July 24, 2024. The Landlord claims the flood was outside of their control, and they acted promptly to repair the problem as efficiently as possible. The Landlord completed the repairs as required under the Act.

The Landlord provided copies of emails with service master regarding emergency flood remediation, and repair invoices as evidence to support their claim.

Is the Tenant entitled to a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Section 32(1) of the Act says 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 evidence and testimony of both parties, I find the Landlord breached section 32 of the Act for the period of June 15 to July 22, 2024. The rental unit was flooded, and the Tenant was unable to occupy any part of the rental unit during the emergency repairs. Therefore, I find the Landlord failed to provide a rental unit in compliance with the health, safety, and housing standards, and which was suitable for occupation by the Tenant during this time.

I accept that the Landlord completed the required repairs. However, I find for the period of June 15 to July 25, 2024, the Landlord was in breach of section 32 of the Act, as well as in breach of the tenancy agreement, of which the primary term is that the Tenant pays rent in exchange for exclusive occupancy of the rental unit.

I find the Tenant lost the use of 100% of the rental unit for the period of June 15, 2024, to July 22, 2024. I find the Tenant has proven the value of their loss, which is the amount of rent paid during the period which they could not occupy the rental unit. I find the Tenant did everything reasonable to minimize their loss, by moving out only after being instructed to do so, and moving back in when the rental unit was suitable for occupation, even before repairs were fully completed.

Section 65(1)(f) of the Act says if a landlord has not complied with the Act, the regulations or a tenancy agreement, an arbitrator may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

I find that the value of the tenancy agreement was reduced by 100% for the period of June 15 to July 22, 2024, as the Tenant could not occupy any part of the rental unit. I find the Tenant is entitled to a one time, retroactive rent reduction of 100% for this period, calculated as follows:

June 15 to June 30 – reduction of ½ month rent = $850.00

July 1 to July 22 – reduction of 22 days of rent

$1700 / 31 days in July = $54.84 per day x 22 days = $1206.48

Total reduction from June 15 to July 22, 2024 = $2056.48

For the reasons above, I find the Tenant is entitled to a Monetary Order of $2056.48 under sections 32, 65, and 67 of the Act.

Conclusion

I grant the Tenant a Monetary Order of **$2056.48,** under sections 32, 65, and 67 of the Act.

The Tenant must serve the Landlord with **this Order** as soon as possible. If the Landlord does not pay, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court).

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: August 9, 2024

Residential Tenancy Branch