Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, OLC, RR, MNDCT, FFT

Introduction

This hearing dealt with a tenant's application for repair orders; orders for the landlord to comply with the Act, regulations or tenancy agreement; authorization to reduce rent for repairs not made or services or facilities not provided; and, monetary compensation for damages or loss under the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

1. Service of documents

The tenant was provided with a Substituted Service Order that authorized the tenant to serve his hearing documents and evidence upon the landlord by email. I confirmed with the parties that the tenant sent and the landlord received two emails containing the tenant's hearing documents, including evidence and an amended monetary claim.

The landlord had provided evidence for this case to the Residential Tenancy Branch and the tenant described three occasions in which he received documents from or on behalf of the landlord. The first package he received was delivered by the building manager on or about January 16, 2019 and included a Landlord's Application for Dispute Resolution. Approximately one week ago the tenant found more documents, 10 to 15 pages, slid under his door. Then, last night three more documents were slid under his door. The tenant stated that there is another hearing set for February 25, 2019 to deal with two more Applications for Dispute Resolution filed by the parties (file numbers referenced on the cover page of this decision) and that it was unclear to him whether the landlord's documents pertain to today's hearing or the hearing set for February 25, 2019.

The landlord clarified that the delivery of documents on January 16, 2019 is for her Application for Dispute Resolution that is set for hearing on February 25, 2019 because it was too late to have her Application crossed with today's proceeding. The landlord stated that the second package delivered one week ago was for today's hearing and the documents delivered last night were for the February 25, 2019 hearing.

The tenant stated that he had not had sufficient time to consider the landlord's evidence for this proceeding considering he was only learning that those documents were for today's proceeding during the hearing. I turned to the Residential Tenancy Branch service portal and I noted that the landlord had uploaded many more documents for today's proceeding than the 10 to 15 pages the tenant acknowledged receiving. The landlord stated that she sent her responses and evidence to the manager to print out and deliver to the tenant. In the absence of the manager at the hearing to testify as to which documents he served, and the discrepancy between the number of pages the tenant received and the number of pages the landlord uploaded, I informed the parties that I would hear the landlord's responses and evidence orally during the hearing.

2. Naming of landlord(s)

The tenant had identified two co-landlords in filing this dispute. The landlord referred to by initials JY stated that the other named respondent is her husband (referred to by initials EY) and pointed to the tenancy documents that name only her as the landlord. I referred to the written tenancy agreement and 2 Month Notice to End Tenancy for Landlord's Use of Property which identify JY as the landlord; and, I enquired as to the identity of the landlord on the Notices of Rent Increase and the condition inspection report and heard that these documents identify the landlord as being JY. I find the standing of EY as a landlord is unclear and I amend the style of cause to reflect the landlord as being JY. It is possible that EY may meet the definition of "landlord" under the Act if he is an owner of the property; however, there was insufficient evidence of that for this proceeding and I excluded EY as a named party. For future Applications, the parties may provide evidence pertaining to ownership of the property if EY is named as a landlord.

3. Multiple issues contained in a single application

Rules 2.3 and 6.2 of the Rules of Procedure provide that an Arbitrator ha discretion to sever an Application where multiple issues that are not sufficiently related are identified in a single application. Rules 2.3 and 6.2 provide as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing
The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

In this case, this hearing was scheduled on an urgent basis because the tenant indicated he required repair orders and orders for the landlord to comply with the Act, regulations or tenancy agreement. Accordingly, I informed the parties that I would address those requests first. The hearing went well over the allotted time and in that time I addressed the outstanding repair issue(s) and the requests for compliance. The tenant's monetary claim pertains to events that have already occurred over a considerable period of time and I find such claims not urgent or related to current outstanding issues. As for the tenant's request for a reduction of future rent payable, I have resolved the outstanding issues by way of this hearing and it is possible that the tenancy may be ending in the near future since the February 25, 2019 hearing is set to deal with a Notice to End Tenancy. Accordingly, I did not consider the tenant's request for a rent reduction and the tenant's monetary claims are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is necessary to issue repair orders to the landlord?
2. Is necessary and appropriate to issue orders for the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy started on May 1, 2016. The rent was originally set at $1,450.00 payable on the first day of every month. Two Notices of Rent Increase were served upon the tenant, bringing the tenant's current monthly rent obligation to $1,563.00.

Repair orders

The tenant identified an issue with the oven in filing this Application. I heard that the oven has since been replaced.

The tenant stated that the wall by the oven is now damaged. When I explored this further I determined that the damage the tenant referred to is a scratch in the drywall that will require some spackle.

The tenant also stated that a mirror has been broken since the start of the tenancy. When I explored this further, the tenant described the glass as being broken. The tenant acknowledged he had not requested the landlord repair the mirror before this hearing. The landlord described the mirror as having a scratch in the corner and that it has been like that for many years.

The tenant confirmed that there are currently no other outstanding significant repair issues.

Considering the parties have a hearing coming up to deal with a Notice to End Tenancy I suggested the parties have the issue of the end of tenancy determined and if the tenancy is going to continue the tenant may raise the issues of a scratch in the drywall and the scratch in the mirror further. The tenant was agreeable to this approach.

Orders for compliance

Two issues were raised by the tenant in the details of dispute and addressed during the hearing: a) difficulty in communicating with the landlord and lack of a service address for the landlord; and, b) the validity of Notices of Rent Increase signed by a person who purported to not be the landlord's agent.

As mentioned previously, the tenant had to apply for a Substituted Service Order in order to serve the landlord with the hearing documents. The tenant was not provided a service address by the landlord and when he asked the landlord's agent for his full name and address the landlord's agent indicated he did not have an agency relationship with the landlord.

I explored these issues further with the landlord. I noted that the tenancy agreement signed by the landlord and the tenant was also signed by the manager who had been acting on behalf of the landlord in issuing the Notices of Rent Increase. The landlord stated that the manager was acting on her behalf and the landlord notified the tenant of this by email; however, her agent recently quit after finding the tenant's actions intimidating.

As for a service address, I noted that the tenancy agreement did not provide one for the landlord. The Notices of Rent Increase did not provide a service address for the landlord and the landlord acknowledged that the move-in inspection report did not provide a service address for the landlord.

The landlord stated that the strata council has the landlord's mailing address and the tenant could have obtained it from the strata council. The landlord suspected that the tenant had obtained a mailing address for her from the strata council but the landlord acknowledged that it was an outdated address and when the tenant asked for her current mailing address she refused to provide it to the tenant. I informed the landlord that it is her obligation under the Act to give the tenant a service address and not upon the tenant to have to determine one for the landlord.

The landlord pointed out that a service address was provided for her in serving the tenant with the 2 Month Notice to End Tenancy for Landlord's Use that is dated January 14, 2019. However, the landlord also testified that the address appearing on the 2 Month Notice is in another country where it may take 45 days for her to receive regular mail and that she is returning to reside in the Province starting on March 26, 2019.

Having heard the landlord's current mailing address in another country that would require at least 45 days of mailing time and the landlord is set to move from that address in the near future, I explored other options for service upon the landlord. The landlord had acknowledged that she receives the emails the tenant sends her, including documents for today's haring. The landlord was agreeable to being served by email. The tenant did not object to this option either. I confirmed that the tenant had the landlord's correct email address and I have recorded it on the cover page of this decision.

I informed the parties that I would authorize and order the tenant to serve the landlord with any documents that must be given or served under the Act by email until the landlord gives the tenant a mailing address upon her arrival in the province; and, that I would also order the landlord to give the tenant a service address upon her arrival in the province. Both parties indicated they were agreeable to this resolution.

Analysis

Upon hearing from both parties, I provide the following findings and reasons with respect to the matters dealt with for this proceeding.

Repair order(s)

The repair issue raised by the tenant in his Applcation has been resolved by the landlord having the oven replaced. Therefore, I make no repair order with this decision.

I suggest the two other minor deficiencies the tenant raised during the hearing be addressed after the fate of the tenancy is determined, as appropriate under section 32 of the Act. As further information for the parties, section 32 of the Act provides as follows:

> **32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

> (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
> (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
> (4) A tenant is not required to make repairs for reasonable wear and tear.
> (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Validity of Notices of Rent Increase

The tenant questioned the validity of Notices of Rent Increase that were issued by the building manager on July 31, 2017 and July 31, 2018.

A landlord is at liberty to appoint another person to act on their behalf with respect to rights and obligations under a tenancy agreement and that person meets the definition of “landlord” under section 1 of the Act. The landlord submitted that she had the building manager acting on her behalf during the tenancy, although the building manager has recently quit.

The landlord submitted that the tenancy agreement is signed by the landlord and the building manager. The signature of the manager on the Notices of Rent Increase is consistent with the signature of the manager on the tenancy agreement. It is also apparent from the tenant’s other evidence that the manager was dealing with repair issues raised by the tenant and communicating with the landlord. It appears to me that the manager was acting on behalf of the landlord with respect to this tenancy and I find it unlikely the manager took it upon himself to issue an Notice of Rent Increase on his own accord when the rent is payable to the landlord. Therefore, I find the Notices of Rent Increase to be otherwise valid and the rent remains as indicated on the most recent Notice of Rent Increase.

Service address for landlord

Section 13 of the Act provides that a tenancy agreement must include several terms including:

> (e) The address for service and telephone number of the landlord or the landlord's agent;

The tenancy agreement executed by the parties does not provide a service address for the landlord. The tenancy agreement fails to comply with the requirements of section 13 in several other ways; however, I limit the scope of this decision to the issue raised, which is the lack of a service address for the landlord.

It is apparent the landlord violated the Act with respect to providing a service address and the tenant is entitled to have one for the landlord so as to communicate with the landlord in writing and serve the landlord in a manner permitted under the Act.

Section 88 of the Act provides for all the ways a party may serve the other party a document and section 88 does not currently recognize email as a permissible method of service.

The landlord did eventually provide a written service address in issuing the 2 Month Notice on January 14, 2019; however, the landlord stated it takes 45 days to receive mail at the address provide and she will be moving away from that address on March 26, 2019.

Section 88(i) permits that the Director, as delegated to an Arbitrator, may issue an order with respect to delivery and service of documents. Section 88(i) provides:

> **88** All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
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> (i) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;

Both parties were agreeable to the tenant serving the landlord by email until such time the landlord gives the tenant a written service address upon her return to the province.

In light of the above, and pursuant to section the authority afforded me under sections 88 and 71(1) of the Act, ***I authorize and order the tenant to serve the landlord with any documents to be served or given to the landlord under the Act by email until such time the landlord give the tenant a written service address. The landlord's email address to use for service is provided on the cover page of this decision.***

I further order the landlord to give the tenant a service address in writing upon her return to the province.

Filing fee

There was merit to the tenant's complaint with respect to the lack of a service address for the landlord, causing him to have to take it upon himself to try to determine a service address for

the landlord and apply for a Substituted Service Order. Therefore I order the landlord to repay the tenant the cost of the filing fee paid for this Application which was $100.00.

Considering the tenancy may be ending in the near future due to landlord's use of property and the tenant may be entitled to withhold last month's rent as compensation if the 2 Month Notice is upheld, I provide the tenant with a Monetary Order in the amount of $100.00. This Monetary Order may be satisfied by the landlord paying this amount to the tenant or the tenant may deduct this amount from rent otherwise payable.

Conclusion

I determined the repair issue has been resolved and i make no repair order with this decision.

The Notices of Rent Increase are valid and the tenant's rent obligation remains at $1,563.00 per month.

The tenant has been authorized and ordered to serve the landlord by email until such time the landlord gives the tenant a service address upon her return to the province.

I have ordered the landlord to give the landlord a service address in writing upon her return to the province.

The tenant is provided a Monetary Order of $100.00 to recover the filing fee paid for this application. This Monetary Order may be satisfied by tenant withholding rent otherwise payable to the landlord or by the landlord paying this amount to the tenant.

The tenant's requests for a rent reduction and monetary compensation are dismissed with leave to reapply.

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: February 06, 2019

Residential Tenancy Branch