Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER PARKLAND TOWERS LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes PSF, RO, FFT

Introduction

This hearing dealt with the applicants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to provide services or facilities required by the tenancy agreements pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by counsel.

Preliminary Issue – Multiple Applicants

Each of the three applicants resides in a different unit in the rental property. Their claim relates to a water leak in a rental unit (the "**Upper Unit**") above each of the tenants' units (the applicants' rental units are on the second, third, and fourth floors). Water leaked from the Upper Unit into each of the applicants' units, and caused damage which required each of their bathrooms to be remediated, and caused them to suffer a loss of use of their bathroom shower and tub for a period of time.

Rather than each applicant filing their own application for dispute resolution, the applicants filed a single application claiming the aforementioned relief against the landlord. This is not in keeping with the Residential Tenancy Branch practices. Rule of Procedure 2.10 (Joining Applications) allows for multiple *separate* applications to be

heard at the same time. However, joining applications is not something that is available to applicants as of right. A joinder must be applied for.

In this case, the applicants failed to make such an application, and instead circumvented the joinder process (mostly likely unintentionally) by filing one application on behalf of all three of them.

In circumstances such as this, it is the policy of the Branch to dismiss the applications of two of the applicants with leave to reapply and proceed by hearing one of the applicants. At the hearing I advised the parties of this, and the applicants all agreed that the application of applicant SH (hereinafter, the "tenant") should proceed.

Preliminary Issue – Amendment to Tenant's Application

In the application for dispute resolution the tenant seeks relief as listed above. However, in his written submissions contained on the application for dispute resolution he states that he is also seeking compensation in the amount of $15 per day for 60 days for loss of use of facilities.

Counsel for the landlord characterized the omission of a monetary claim as a technical or administrative error on the part of the tenant, and suggested that it may be remedied by way of amending the application. The landlord's property manager stated that she, upon review of the application for dispute resolution, understood that the tenant was seeking a monetary order and that she had adequate time to consider her position on this matter.

Rule 4.2 states:

> **4.2 Amending an application at the hearing**
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> In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In the circumstances, I find that the landlord anticipated that the tenant would advance a monetary claim at the hearing, and I find that the landlord would not be prejudiced if I ordered that the application for dispute resolution be amended to permit a monetary

claim for $15 per day for each day the landlord was without the use of facilities. The landlord testified that he was without the use of his shower or bath for 88 days.

Service of Documents

The tenant testified that the landlord was personally served the notice of dispute resolution form and evidence on February 5, 2019, by giving these documents to a representative of the landlord. The landlord's property manager confirmed receipt of the notice of dispute resolution package via personal service. I find that the landlord was served with these documents on February 5, 2019, in accordance with sections 88 and 89 of the Act.

The landlord did not submit any documentary evidence in support of its response to the tenant's claim. Rather, it stated it would call a single witness to give oral evidence.

Issue(s) to be Decided

Is the tenant entitled to:

- An order to the landlord to make repairs to the rental unit?
- An order to provide services or facilities required by the tenancy agreement?
- A monetary order in the amount of $1,320.00 ($15 x 88 days)?
- Recover his filing fee for this application from the landlord pursuant to section 72?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written month to month tenancy agreement starting February 1, 2014. Monthly rent is $1,147.00 plus $35.00 per month for parking. and is payable on the first of each month. The tenant paid the landlord a security deposit of $$525.00. The landlord still retains this deposit.

The tenant testified that the Upper Unit flooded on October 26, 2018 (the "**Flood**"). Water emanated from the Upper Unit and descended into the tenant's rental unit (the

"**Rental Unit**"). The Flood caused significant damage to the Rental Unit's bathroom. The tenant testified that the following steps were taken by the landlord (or their agents) to remedy the problem:

- October 28, 2018, the landlord notified the tenant of the Flood;
- November 1, 2018, the landlord conducted an inspection of the bathroom;
- Some period in November, the landlord set up fans to attempt to dry out the bathroom and prevent the need for further remediation;
- December 3, 2018, the landlord started demolition of the bathroom which rendered the bathtub and shower unusable;
- February 4, 2019, restoration was started on the bathroom; and
- March 2, 2019, restoration was finished and full use of the bathroom returned to the tenant.

The tenant testified that the Rental Unit only has one shower and bath. He testified that the landlord made an unoccupied unit in the rental property available to him and the other tenants affected by the Flood to ensure that they had access to a shower. The tenant testified that this unit was located three floors below the Rental Unit, and it was inconvenient to use, because he could only use it when it was not in use by another tenant, and that he had to break up his morning routine, and return upstairs to his the Rental Unit following the shower to get dressed.

The tenant claims that the length in time it took the landlord to remediate the Rental Unit was unduly long, and that the landlord failed to properly advise him of the timeline for repairs.

The tenant claims that he was without the use of his shower or bath for 88 days (December 3, 2018 to March 2, 2019), and that he is entitled to compensation in the amount of $15.00 per day (for a total of $1,320.00). The tenant testified that this amount was what he thought was "fair". He did not provide any further basis as to how he arrived at this amount.

The landlord's counsel agreed with the timeline of events as set out by the tenant. He called the project manager of the remediation company as a witness. The witness stated that 10 units were damaged by the Flood. He testified that, following inspection of the bathrooms in these units, lead and asbestos tests had to be conducted, and that this took a week. He testified that lead was found in the bathroom tiles, and a WCB assessment had to be completed, which caused a further delay of two weeks. He stated that they received approval to commence the demolitions in early December 2018, and

they started at that time. He testified that, over December there were one to two week delays in completing the demolitions due to the winter holidays. He stated that demolitions were completed by early January, and that renovations were ready to be started in early February.

The witness testified that, in his experience, such remediation projects can often take six months to complete, and that, in his opinion, this remediation project was completed quite quickly.

Counsel for the landlord argued that the tenant was not entitled to damages as he failed to meet the requirements for an award of damages as set out in Policy Guideline 16, which states:

> 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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Counsel for the landlord argued that the landlord has not failed to comply with the Act, as they have acted reasonably and promptly to repair the damage caused to the Rental Unit, and by offering alternative shower facilities to the tenant. Additionally, the landlord's counsel argued, if the landlord did breach the Act, then the tenant did not suffer any actual loss, as from the time the flood occurred to the time the remediation was complete, the tenant was never without shower facilities.

Analysis

The parties agree that all repairs to the Rental Unit bathroom have been completed. Accordingly, I dismiss without leave to reapply the tenant's applications for orders that

the landlord to make repairs to the rental unit and provide services or facilities required by the tenancy agreement.

The tenant has alleged that the landlord breached the Act by failing to repair the bathroom. Section 32 of the Act states:

> **Landlord and tenant obligations to repair and maintain**
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> **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.

As such, I find that the landlord is obligated to repair the damage caused by the Flood to the Rental Unit. I find that the landlord has complied with this obligation as of March 2, 2019.

The tenant argues that the 88 day period of time where he was without access to a shower in the Rental Unit was unduly long, and as such, is a breach of the Act.

The landlord argues that the repairs did not take an undue or unreasonable amount of time. The landlord's witness, whom I accept to be a project manager for a remediation company, provided evidence that the amount of time taken to remediate the bathroom (that is, 88 days) is not unreasonable.

The tenant did not provide any evidence (either documentary or a witness of his own) which would suggest what a reasonable time for the completion of a remediation of this nature would be.

Rule 6.6 states:

> **6.6 The standard of proof and onus of proof**
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> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this case, as the tenant is alleging that the landlord has taken unreasonably long to complete the repairs to the bathroom, he bears the onus to prove this to be the case. He has asserted that 88 days is too long, he has offered no evidence in support of this. The landlord has provided third-party evidence that the 88 days is not unreasonably long.

Based on the forgoing, I find that 88 days is a reasonable amount of time for the landlord to have taken to remediate the 10 rental unit damaged by the Flood.

Counsel for the landlord stated the correct test to be applied when making awards for damages. In brief, in order to obtain a monetary order for damages suffered, the tenant must:

- prove the landlord has failed to comply with the Act, regulation or tenancy agreement;
- prove that loss or damage has resulted from this non-compliance;
- prove the amount of or value of the damage or loss; and
- demonstrate that he has acted reasonably to minimize that damage or loss.

For the reasons stated above, I do not find that the landlord has breached the Act. As such, the tenant is not able to satisfy the first part of this test.

Accordingly, I dismiss the tenant’s application, without leave to reapply.

As the tenant has not been successful in this application, I decline to order that his filing fee be repaid by the landlord.

Conclusion

The tenant's application is dismissed, without 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: March 18, 2019

Residential Tenancy Branch