Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SQUAMISH (EIGHTH) APARTMENTS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR FFT

Introduction

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

- an order to allow the tenant to retroactively reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:52 am in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution form and supporting evidence package via registered mail sent to its registered and records office on September 6, 2019. The tenant provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. Following this service, the tenant testified that he asked the landlord's property manager ("**NH**") about the landlord's position, and NH replied that he did not have instructions to respond to the application. I find that the landlord was deemed served with this package on Sept 11, 2019, five days after the party mailed it, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a retroactive rent reduction?
Is the tenant entitled to recover his filing fees?

Background and Evidence

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

The parties entered into a written tenancy agreement starting January 7, 2019. Monthly rent is $750 and is payable on the first of each month. The tenant paid the landlord a security deposit of $219. The landlord still retains this deposit.

The tenant testified that he has ended the tenancy and will be leaving the rental unit at the end of October 2019.

The tenant testified that the bathroom fan does not work. He testified that there is no window in the bathroom. He testified that he asked NH to fix the fan but was told that "there is no fan" in the bathroom. The tenant testified he was confused by this, as there was a ventilation grate in the bathroom.

The tenant testified that the lack of ventilation in the bathroom causes the rental unit to become stuffy, which requires him to open the front door of the rental unit. The front door opens onto a shared balcony which overlooks a parking lot (the residential property is a converted motel). The tenant testified that the when the door of the rental unit is open the rental unit become very noisy. Additionally, other tenants smoke on the shared patio, and cigarette smoke will often drift into the rental unit, which caused the tenant irritation.

The tenant also testified that the thermostat in the rental unit did not work. He testified that, as a result, he could not turn off the heat. This was not a problem in the colder months but starting in May and continuing through August 2019 the rental unit became noticeably warmer that the already-warm outdoors.

The tenant testified that he complained of this situation to NH in May 2019, and that NH attempted to fix the thermostat on two separate occasion (the first time a plumber was sent in to look at the building's heating system, and the second time NH replaced the thermostat in the rental unit), but neither of these attempts resolved the problem.

The tenant testified that another resident who had previously experienced the same issue helped him resolve the problem in August 2019 by cutting into the drywall of the unit directly below the rental unit to access and turn off the rental unit's radiator shut off valve.

The tenant testified that throughout May, June, and July 2019, the rental unit was unbearably hot at nigh., He testified that he did not want to leave the rental unit's front door open while he slept, so there was no ventilation in the rental unit at night. He testified that he had to sleep without any covers or clothes in an effort to stay cool. He testified that as a result of the high temperature in the rental unit he slept very poorly throughout May, June, and July 2019. He testified that he spent all the nights at the rental unit, and did not seek out alternate accommodations.

The tenant claims a retroactive rent reduction of $3,300, representing the following:

		Deduction	
	Rent Paid	Ventilation	Heat
Jan-19	$581	$150	$0
Feb-19	$750	$200	$0
Mar-19	$750	$200	$0
Apr-19	$750	$200	$0
May-19	$750	$200	$450
Jun-19	$750	$200	$450
Jul-19	$750	$200	$450
Aug-19	$750	$200	$0
Sep-19	$750	$200	$0
Oct-19	$750	$200	$0
	$7,331	$1,950	$1,350
		Total	**$3,300**

When asked how he arrived at these amounts, the tenant testified that he "pulled them out of the air", and that he believed that the landlord was making an economic decision not to make the necessary repairs, thinking it would be cheaper to pay whatever penalty was assigned to them, rather than to pay to repair the bathroom fan and the heating system.

Analysis

The tenant has framed his application as a rent reduction. However, as the tenancy is ending at the end of October 2019, he is not seeking the rent to be reduced in the future. Rather, he is seeking a rent reimbursement.

Such an application is more properly characterized as an application for a monetary order for compensation under the Act for the landlord's breach of the Act or tenancy agreement.

I find that upon reviewing the tenant's application materials a reasonable person would understand that the tenant is seeking a retractive monetary order. The substance of the tenant's claim is clear. As such, I find that it is within my ability to grant such an order.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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.

Did the Landlord Breach the Act?

Section 32 of the Act states:

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

I accept the tenant's uncontroverted testimony that the bathroom has no workable source of ventilation and is equipped with a non-functioning ventilation fan. I find that the landlord was aware that there was no ventilation in the bathroom and refused to fix the fan.

I find that, with regard to the age and character of the rental unit, in order to make it suitable for occupation, there must be functioning ventilation in the bathroom. In coming to this conclusion, I rely on the fact that there is an easy means to provide ventilation to the bathroom (replacing the fan) and that the landlord refused to do so and that the rental unit was designed to operate with a ventilation fin in the bathroom (as is evidenced by the grate). The lack of a ventilation fan therefore amounts to a breach of section 32 of the Act.

Similarly, I find that by providing the tenant with no means to regulate the temperature of the rental unit, the landlord breached section 32 of the Act. By attempting to repair and replace the thermostat to provide the tenant with temperature controls, the landlord implicitly demonstrated that such controls are required to make the rental unit suitable for occupation. It is unreasonable for the rental unit's heating system to be running during the summer with no way for the tenant to turn it off.

Did the tenant suffer damages as a result of the landlord's breach?

I accept the tenant's uncontroverted evidence that he suffered damages as the result of the landlord's breach. I find that the lack of proper ventilation in the bathroom required that he leave the front door of the rental unit open, which in turn caused noise and cigarette smoke to travel into that rental unit that otherwise would not have.

I also find that the tenant suffered damage during the months of May, June, and July 2019 as a result of not being able to turn off the heat in the rental unit. I find that this caused him great discomfort, especially at night when he could not leave the front door open to cool the rental unit down and effected the quality of his sleep.

I find that the landlord's breaches of section 32 of the Act caused the tenant to be deprived of his quiet enjoyment of the rental property, to which he is entitled, pursuant to section 28 of the Act.

Can the tenant prove the quantum of damages suffered?

The tenant provided no basis for how he arrived at the amounts of rent reductions he claimed. Rather, the amounts seem to have been arrived at based with an aim to discourage the landlord from engaging in a cost/benefit analysis for making the repairs.

This in not an appropriate method of calculating damages.

Rather, Policy Guideline 6 sets out how damages are to be calculated for loss of quiet enjoyment:

> **Compensation for Damage or Loss**
>
> A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.
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> A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

1. Ventilation

I find the rent reimbursement of $200 per month ($150 for January 2019) claimed by the tenant to be excessive, and not representative of the amount by which the value of the tenancy was reduced. A bathroom fan is not something that needs to be run consistently throughout the day; it is run only intermittently. As such, I find that the time the tenant was deprived of his quiet enjoyment as a result of the lack of a bathroom fan was minimal. Accordingly, I find that a 5% retroactive rent reduction is appropriate compensation for this damage.

2. Heating

I find that the inability to turn off the heat during the summer did cause a significant loss of quiet enjoyment of the rental property. However, I do not find that such a loss is properly quantified as $450 per month (60% of the monthly rent). The tenant still gained the primary benefit of the tenancy agreement—shelter. Rather, I find that a $250

reduction of rent for May, June, and July 2019 (33.3% reduction) is a more appropriate amount.

As such, I find that the tenant is entitled to a retroactive reimbursement of rent in the amount of $1,116.55, calculated as follows:

		Deduction	
	Rent Paid	Ventilation (5%)	Heat (33.3%)
Jan-19	$581	$29.05	$0.00
Feb-19	$750	$37.50	$0.00
Mar-19	$750	$37.50	$0.00
Apr-19	$750	$37.50	$0.00
May-19	$750	$37.50	$250.00
Jun-19	$750	$37.50	$250.00
Jul-19	$750	$37.50	$250.00
Aug-19	$750	$37.50	$0.00
Sep-19	$750	$37.50	$0.00
Oct-19	$750	$37.50	$0.00
	$7,331	$366.55	$750.00
		Total	**$1,116.55**

Did the tenant minimize his damages?

I find that by asking NH to repair the bathroom fan and thermostat, the tenant reasonably minimized his damages.

As the tenant has been successful in the application, I find that he is entitled to recover his filing fee from the landlord.

Conclusion

Pursuant to sections 67 and 72, I order that that the landlord pay the tenant $1,216.55, representing a retroactive rent reduction and the reimbursement of the tenant's filing fee. This order may be filed and enforced in the Provincial Court of British Columbia.

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: October 25, 2019

Residential Tenancy Branch