Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT DRI LAT LRE MNDCT OLC PSF RP RR

Introduction

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

- An order to allow access to the tenant or their guests pursuant to section 30;
- An order to dispute a rent increase pursuant to section 41;
- An order to change the locks to the rental unit pursuant to section 31;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- A monetary order for damages or compensation pursuant to section 67;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order for regular repairs to be done to the rental unit pursuant to section 32;
- An order for a reduction of rent pursuant to sections 32 and 62.

The tenant and both of the landlords attended the hearing. The landlords were assisted by an agent, BC ("landlord"). The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceedings package and evidence. The tenant acknowledged receipt of the landlord's evidence but indicated she wasn't sure if it complied with the Residential Tenancy Rules of Procedure in not being labelled. Despite this, the tenant was prepared to proceed with hearing the merits of the case as presented.

Preliminary Issue

In evidence, the landlord provided a copy of a decision made by an arbitrator regarding several of the same issues described in the application that came before me. The file

number of the previous case is noted on the cover page of this decision. I reviewed the previous decision and in that case, the arbitrator made the following rulings:

- I dismiss the tenant's application to change the locks and suspend or set conditions on the landlord's access to her rental unit.
- Provide access to tenant's front door: Dismissed without leave to reapply.
- Restoration of right to use parking space. Landlord is to allow tenant the use of a parking space.
- Access to storage room. Dismissed.
- The tenant's application for repairs were dismissed as the arbitrator was not satisfied that the landlords have failed to address any outstanding written request for repairs at the time of the hearing.

The tenant testified that she felt the previous decision was based on lies and fraudulent evidence supplied by the landlord. Although she had filed for a review of the previous decision, the review application was dismissed. The tenant reapplied for the original relief sought as the previous application was unsuccessful.

The principle of ***res judicata*** prevents an applicant from pursuing a claim that already has been decided and also prevents a respondent from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

I find that the following portions of the tenant's claim could not be re-adjudicated as they are legally barred by the doctrine of ***res judicata.***

- An order to allow access to the tenant or their guests pursuant to section 30;
- An order to change the locks to the rental unit pursuant to section 31;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62;

I determined the issue of repairs pursuant to section 32 would be adjudicated upon during this hearing as the tenant testified she has provided evidence of giving the landlord written notice of the need for repairs. From the tenant's application:

> *Flooding in the basement that has been ongoing before I moved in that they said would be repaired. Also moldy shower stall that is falling apart.*

The remaining portions of the tenant's application would also be adjudicated upon, as the tenant has not previously filed an application regarding them:

- An order to dispute a rent increase pursuant to section 41;
- A monetary order for damages or compensation pursuant to section 67;
- An order for regular repairs to be done to the rental unit pursuant to section 32;
- An order for a reduction of rent pursuant to sections 32 and 62.

Issue(s) to be Decided

Is the tenant entitled to:

- An order to dispute a rent increase pursuant to section 41;
- A monetary order for damages or compensation pursuant to section 67;
- An order for regular repairs to be done to the rental unit pursuant to section 32;
- An order for a reduction of rent pursuant to sections 32 and 62?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Neither party provided a full copy of the tenancy agreement into evidence.

The tenant provided the following testimony. When she moved in, rent was set at $750.00 per month and utilities were set at $65.00 per month. The single page of the tenancy agreement regarding clause 6: rent was included as evidence. The landlord served the tenant with her first Notice of Rent Increase on June 25, 2019. In this document, the landlord states rent is $750.00 + $65.00 utilities, totalling $815.00. The landlord seeks an additional $20.00 in rent, making it $835.00 month. The tenant disputes that the utilities should be included in the calculation of the rent increase, saying only the $750.00 rent portion is subject to the increase. The landlord disputes this, saying that the full rent, including utilities is $815.00 and the landlord is entitled to increase both.

The tenant testified that the previous arbitrator dismissed her application for repairs because she did not provide the landlord with written notice of the need to repair the unit and that communication with the landlord had been verbal. During the hearing, the tenant did not draw my attention to any written notices. The tenant testified the shower

is old, the sealant is deteriorating and the frame is made of wood which is rotting. Photographs of portions of the shower were provided as evidence. The tenant testified that although she sealed the shower herself, the shower continues to suffer from damaged tile, mold and rot. When she tells the landlord about the shower and flooding issues, the landlord tells her it will be fixed in the summer when it's dry.
The landlord testified that the tenant never cleans her shower, causing it to grow mold. The tenant has never complained about the shower in 10 years of living in the unit. It was only in November 2018 that the tenant started complaining and it's all imaginary.

The tenant also provided photographs to support her claim of flooding in the basement. She testifies that her photo of a cardboard box showing signs of water damage is evidence of the flooded basement. Although the landlord has a pump in the basement for times when the basement suffers leaks, the tenant testifies that the pump runs all night long, disturbing her sleep and she is often required to turn it on and off herself. The tenant says there are mushrooms growing from the damp, however no photos of this were provided. The landlord testified that there were unusually heavy rains last October and November that may have caused some water to collect however the basement is normally dry throughout the year. Prior to a new roof being installed 3 years ago and extensive work being done along the side of the house including a new drain installed, flooding may have occurred occasionally however not since the work was done.

The tenant also seeks a rent reduction and monetary compensation of $2,400.00 due to '*yard maintenance not being provided for about a year plus portion of yard cut off and parking space'.* The tenant testified that approximately one year ago, the landlord had installed chicken wire and a fence that prohibits the yard maintenance worker from entering her portion of the yard to do maintenance. Because access to the tenant's portion of the yard was blocked, the grass is overgrown, leaves are accumulating and the tenant describes it as a 'filthy mess'. Photos of the yard and fence were provided as evidence. The tenant says $200.00 per month is reasonable because the landlord estimated in a previous hearing that it costs that much to maintain the tenant's yard. The tenant doesn't like the zigzag design of the fence because it's not straight when she looks at it from her unit. The landlord testified that the fence was put in place to provide the tenant with the privacy she wanted. The tenant complained the landlords were 'spying' on her and harassing her, so they had the fence put up to alleviate her complaints.

Regarding the parking space, the tenant testifies that the landlords arbitrarily changed her parking spot from a more desirable, easily accessible spot to a different spot not to her liking. She finds the new spot inconvenient and wants the spot delegated to her back. The landlord testifies the tenant does not have assigned parking. He acknowledges he is to provide parking to the tenant pursuant to the tenancy agreement, however the tenant has no right to decide which spot is hers.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

It is worth noting here that the tenant has provided an immense amount of documentary material to support her multiple claims. During the hearing, although the tenant testified she had provided evidence to support each of her claims, only the documents she specifically drew my attention to were referenced in this decision, as required by Residential Tenancy Branch Rule of Procedure 7.4 which reads:

Evidence must be presented: Evidence must be presented by the party who submitted it, or by the party's agent.

I also note that the landlord did not refer to any of the documentary evidence he supplied. The landlord's documentary evidence has not been referenced in this decision.

Rent Increase

The parties agree that the landlord increased the amount being paid by the tenant using both the rent portion ($750.00) and the utilities portion ($65.00). Both the Notice of Rent increase and clause 6 of the tenancy agreement reflect that they are separate amounts, even though the cost of utilities are fixed. Section 43 of the Act states:

43 (1) A landlord may impose a **rent increase** only up to the amount

a) calculated in accordance with the regulations,
b) ordered by the director on an application under subsection (3), or
c) agreed to by the tenant in writing.

Section 43(1) does not allow a landlord to impose an increase to the amount a tenant pays for utilities. As such, I find the rent increase to be contrary to section 43(1) and order that the rent increase comply with that section. As the regulations for 2019 set

rent increases at 2.5%, the landlord is entitled to increase the rent by $18.75. ($750.00 x 2.5% = $18.75).

The tenant's rent, commencing December 1, 2019 shall be $768.75 + utilities remaining at $65.00, for a total of **$833.75** in accordance with section 43(1) of the Act.

Monetary Order pursuant to section 67

According to her application, the tenant seeks the following:

> *Landlord has not maintained property. They claimed it cost $200.00 per month to maintain yard. They also cut off a portion of my yard.*

During the hearing, the tenant testified she estimates she is owed approximately one year's worth of unmaintained yard, totaling $2,400.00.

Section 67 of the *Act* establishes 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. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

According to Residential Tenancy Policy Guideline-16, Compensation for Damage or Loss, the tenant can seek compensation for loss of access to any part of the residential property provided **under a tenancy agreement**.

To support her claim, the tenant drew my attention to clause 8 of the tenancy agreement, stating which things the tenant is responsible for. Notably, 'lawn care' is circled as unticked. She testified that the unticked 'lawn care' is indicative of the landlord's responsibility to provide her with a maintained yard.

I find the evidence provided does not support the tenant's argument that access to portions of the yard, maintained by the landlord forms part of the tenancy agreement. Clause 8 of the tenancy agreement appears to indicate which appliances and services

are included in the rent. The tenancy agreement clearly includes items such as parking and sewage disposal included in the rent; it also provides additional lines where the landlord could specify such things as a ‘backyard living space’. Such a notation is notably missing.

I find the landlord has not taken away or restricted a service or facility that is essential to the tenant’s use of the rental unit as living accommodation or included in the rental agreement. In terms of the 4 point test, the tenant has not succeeded in proving the landlord violated the tenancy agreement, part 2 of the test. The tenant’s claim for compensation is dismissed without leave to reapply.

Repairs

The tenant seeks an order that the landlord repair flooding in the basement and fix a moldy shower stall that is falling apart.

Section 32 of the Act says:
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.

Residential Tenancy Policy Guideline PG-1 gives guidance to landlords and tenants regarding their responsibility for the residential premises:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.
>
> …
>
> An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Although she has testified that she's been required to wade through flood water to access the pump provided by the landlord, the tenant has not provided me with persuasive evidence to substantiate her claim that the rental unit suffers from the flooding as described by her. Photographs of the alleged flooding would have been compelling, however none were provided or were referred to during the tenant's testimony. The landlord has acknowledged that the basement did have a minor flood last year due to unusually heavy rains, but flooding in the basement is not a regular occurrence. During the hearing, both parties made references to the pump the landlord had provided in case there was flooding.

I find the tenant has provided insufficient evidence to show the landlord has neglected to provide a living accommodation that doesn't meet the standard elaborated above in PG-1. The landlord is providing a rental unit that complies with health, safety and housing standards established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant's claim for repairs for flooding is dismissed without leave to reapply.

The tenant seeks an order to repair a 'moldy shower stall that is falling apart'. The tenant referred me to the photographs of the shower. The shower does, indeed show signs of mold and neglect however I cannot determine that the deterioration of the shower is due to any fault of the landlord. PG-1 indicates the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. Therefore, the tenant is responsible for maintaining the bathroom of the rental unit, which includes periodically cleaning it to prevent mold and rust.

I find that, having regard to the age, character and location of the rental unit, the landlord has fulfilled his responsibility to maintain the rental unit. This portion of the tenant's claim is dismissed without leave to reapply.

<u>Rent reduction</u>

The tenant seeks a rent reduction of $3,000.00 for:

yard maintenance not provided for about a year plus portion of yard cut off and parking space.

I have already found that the tenancy agreement does not include any provision for the landlord to provide the tenant with a maintained yard. As such, this portion of the tenant's claim is dismissed without leave to reapply.

Regarding the parking space. Residential Tenancy Policy Guideline-22. [Termination or Restriction of a Service or Facility] states:

> In a tenancy agreement, a landlord may provide or agree to provide services or facilities in addition to the premises which are rented.
> …
> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

The tenancy agreement clearly indicates the landlord is to provide the tenant with a parking space. The evidence and testimony of both the parties shows the landlord does provide parking however the choice of space is not agreeable to the tenant. Had the tenancy agreement specified which parking space was allocated to the tenant, the tenant would have a persuasive argument that she would be entitled to a rent reduction for not being provided with that particular space. Here, however, no such allocation of parking is noted in the tenancy agreement. As the landlord is already providing parking, albeit not the preferential parking the tenant seeks, the claim for a rent reduction is dismissed without leave to reapply.

Conclusion

The tenant's rent, commencing December 1, 2019 shall be $768.75 + utilities remaining at $65.00, for a total of **$833.75** in accordance with section 43(1) of the Act.

The remainder of 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: November 23, 2019

Residential Tenancy Branch