Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, RP, MNDCT, RR, PSF, OLC

Introduction

In this dispute, the tenants seek various relief under the *Residential Tenancy Act* (the "Act"). An application for dispute resolution was made on May 25, 2020 and a dispute resolution hearing was held on June 18, 2020. The tenants attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the landlord did not attend.

The tenants testified that they served the Notice of Dispute Resolution Proceeding package and their documentary on the landlord by way of email on May 25, 2020. A copy of the email, which was sent to both the landlord and his daughter, was submitted into evidence. I asked the tenant S.B. if they could confirm that the landlord received the package, to which she responded "absolutely." The landlord responded by text and threatened the tenants with eviction. Moreover, the tenant R.H. explained that the email is the one to which they send their rent. Based on the undisputed testimony and documentary evidence I find that the landlord was served in compliance with section 89(2)(e) and 71(1)(b) of the Act, and that they were served on May 25, 2020.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

Whether the tenants are entitled to the following:

1. an order that the landlord comply with the Act, the regulations or the tenancy agreement, pursuant to section 62 of the Act;

2. an order that the landlord make regular repairs under section 65 of the Act;

3. an order that the landlord provide services or facilities as required by section 62 of the Act;

4. a reduction in rent for repairs, service or facilities agreed to but not provided, pursuant to section 65 of the Act;

5. compensation pursuant to section 67 of the Act; and,

6. recovery of the filing fee pursuant to section 72 of the Act.

Background and Evidence

The tenancy began when the tenants moved into the rental unit (the “house”) in mid-March 2019, though a written tenancy agreement indicates that the tenancy officially began April 1, 2019. A copy of the tenancy agreement was submitted into evidence. Monthly rent, which is due on the first of the month, is $2,100.00.

The tenants testified that the following issues need to be addressed:

1. the back-deck railing requires repairs; it is unstable and unsafe, and the posts need to be replaced or repaired;
2. there is no key for the front door and the keypad entry is inoperable;
3. there is a ceiling leak in the bathroom, and the bathroom is unusable;
4. a replacement microwave (which was purchased by the landlord after the original overhead microwave burnt out) has not yet been installed;
5. the closet doors, which were sitting on the floor when the tenants took possession of the rental unit, remain uninstalled;
6. the kitchen tap leaks;
7. two outdoor water taps leak;
8. smoke detectors that should have been installed at the start of the tenancy remain uninstalled;
9. and, more recently, there is black mold forming as a result of water leaks.

Tenant S.B. gave evidence that as a result of the leaks, both bathrooms are now unsafe to use. She has health issues which are exacerbated by these issues, and both she and tenant R.H. feel unsafe in the house. Even more so because there are two children (of elementary school age) living with them.

The tenants testified that most of the issues listed above have been present since the day they moved in, with the exception of the microwave (which arose in November 2019) and the downstairs living room leak (which is from a toilet water leak). They reiterated that “we have two bathrooms that we can’t use.”

These issues were not resolved after they moved in, and they sent various communication to the landlord, including a lengthy and detailed letter sent August 2019. A copy of this letter was submitted into evidence. However, the landlord seems to have simply ignored, or not bothered, to address any of the issues. It was only recently, within the past few months, that the landlord and his daughter (who appears to be acting as the landlord’s agent) decided to take some preliminary steps. Copies of correspondence between the tenants and the landlord’s daughter were submitted into evidence as well.

In terms of the compensation sought, the tenants argued that they seek $2,000.00, but after some discussion, $2,100.00, which represents one month’s rent, is a reasonable amount of compensation for living in a house for over a year that is plagued with health and safety issues, including but not limited to the non-use of two bathrooms. They also seek a reduction of rent should the landlord not make the necessary repairs.

Analysis

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.

Section 27 of the Act states the following:

> 27 (1) A landlord must not terminate or restrict a service or facility if
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> (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
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> (b) providing the service or facility is a material term of the tenancy agreement.

Section 32(1) of the Act states that

> 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.

In this case, back deck railings cannot be such that they are unstable and unsafe. As noted by the tenant in her text to the landlord's daughter, children are at risk of falling through them. Such rails are not suitable and are unsafe. The water leaks throughout the house are unacceptable and, with the recent growth of black mold that has resulted, make the rental unit increasingly unsuitable for occupation and, unsafe. While the outside water taps should not leak, and while they do not pose any immediate safety issues, they should be in a state of repair such that no leaking occurs.

Properly installed closet doors and a properly installed microwave (as it was at the beginning of the tenancy) are essential to the tenants' use of the rental unit. It is wholly unacceptable for a landlord to not have closet doors, or any doors for that matter, installed when tenants move in. Likewise, if the kitchen had an overhead, working microwave at the start of the tenancy, then it falls on the landlord to repair and replace the microwave when the failure of the microwave was not caused by the tenants.

What is rather more concerning, however, is the landlord's failure to install the smoke detectors, which have, according to the tenants, been "sitting in a box" in the garage. The smoke detectors are not battery operated and must be hardwired into the house's electrical system. Smoke alarms are mandatory in all dwellings pursuant to section 2.1.3.3 of the *British Columbia Fire Code.* The landlord's failure to install the smoke alarms is, I conclude, a clear breach of section 32(1) of the Act.

Similarly concerning is the landlord's failure to provide keys to the tenants for the front door of the rental unit. Landlords are required to provide keys to a new tenant upon the tenant taking possession of the rental. (See sections 31 and 32 of the Act.)

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their application for an order under section 62 of the Act, and which addresses issues 1 through 3, inclusive. The details of this order are outlined in the Conclusion below.

Regarding the tenants' claim for compensation, when an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

> 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
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> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> . . .
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this dispute, the landlord failed to comply with sections 27 and 32 of the Act. But for the landlord's failure to comply with the Act and the written tenancy agreement, the tenants would not have had unsafe back railings, an unlockable front door, out-of-use bathrooms, water leaks, black mold, a non-functioning microwave, and inoperable smoke alarms. Most of these issues have remained unresolved for over a year, and for ten months at least when the tenants sent a detailed written request to the landlord in August 2019. To seek compensation in the amount of one month's rent is, I find, more than reasonable in the circumstances. In terms of mitigation, the tenants appear to have done all that is reasonable in the circumstances. There is, I think, not much more one can do other than to constantly ask a landlord to do what is required of them under the law.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for compensation in the amount of $2,100.00. This amount is, I find, equivalent to a reduction in the value of the tenancy agreement caused by the landlord's lengthy, and ongoing breach of the Act and the tenancy agreement.

In full satisfaction of the above-noted award I hereby order, pursuant to section 65(1)(f) of the Act, that the tenants must withhold rent in the amount of $2,100.00 that would have otherwise been due on July 1, 2020.

Regarding the tenants' claim to reduce rent for repairs, service or facilities agreed to but not provided, pursuant to section 65 of the Act, I find that a reduction in rent of 50% is reasonable in the circumstances. This reduction in rent, which is ordered pursuant to section 65(1)(f) of the Act, shall only take effect if the landlords fail comply with all elements of my order by July 31, 2020.

Should the landlords fail to comply with my order in its entirety by July 31, 2020, the tenants may withhold $1,050.00 in monthly rent starting August 1, 2020, and the reduction in rent will continue until the landlord complies with all aspects of my order. Upon the landlord complying with my order then rent reduction shall be rescinded. Any reduction in rent shall be effective for that entire month, regardless of when during the month the landlord completes the work required.

Finally, as requested by the tenants in both their application and at the hearing, I hereby order that the landlord comply with section 29(1) of the Act, and with section 8 of Ministerial Order No. M089, which reads as follows:

> 8 (1) Despite section 29 (1) (b) of the *Residential Tenancy Act* and sections 11 (2) (a) and (3) of the Schedule to the *Residential Tenancy Regulation*, a landlord must not enter a rental unit that is subject to a tenancy agreement even if the landlord gave the tenant written notice in accordance with those sections that the landlord would be entering the rental unit.
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> (2) If a landlord gave written notice under section 29 (1) (b) of the *Residential Tenancy Act* before the date of this order, and the date for entering the rental unit given in the notice increase is after the date of this order, that notice is null and void.

> (3) Despite any section of the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or any term of a tenancy agreement that limits entry by a landlord into a rental unit that is subject to a tenancy agreement, a landlord may enter a rental unit that is subject to a tenancy agreement if the following applies: (a) an emergency in relation to the COVID-19 pandemic exists, and (b) the entry is necessary to protect the health, safety or welfare of the landlord, a tenant, an occupant, a guest or the public.

In other words, unless the landlord's entry is necessary for the reasons set out in subsection (3), the landlord must obtain the permission of the tenants. That having been said, and as I explained to the tenants during the hearing, they must not be unreasonable in granting the landlord entry into the house, given that the landlord is required to take care of several matters. They are to be expected to be as flexible as possible in granting the landlord, or any necessary contractors, access to the house.

Last, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the fee. As the tenants were successful in their application, I grant their claim for recovery of the filing fee. In full satisfaction of this award the tenants may withhold $100.00 of the rent for August 2020.

Conclusion and Order

I HEREBY ORDER THAT

1. the tenants may withhold rent in the amount of $2,100.00 for July 2020 as compensation for the amount awarded;

2. the tenants may withhold $100.00 from the rent for August 2020 as compensation for the filing fee;

3. the landlord must install smoke detectors (smoke alarms) in the rental unit in a manner that complies with the *British Columbia Fire Code,* and that this installation be completed within two (2) weeks of this Decision being issued;

4. the landlord must, no later than July 31, 2020,

    a. repair all water leaks in the rental unit, both inside and outside,
    b. install the overhead microwave and ensure its operability,

c. install all closet doors,
d. provide keys to the tenants for the front door and ensure that any digital keypad access unit is in working order,
e. repair the back deck railings in a manner that complies with provincial building codes and standards, and,
f. make any repairs necessary to remove any black mold present;

5. if the landlord fails to comply with all of sections 3 and 4 of this Order, that monthly rent shall be reduced by 50% starting August 1, 2020, and that this rent reduction shall continue until the landlord has complied with the Order.

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: June 18, 2020

Residential Tenancy Branch