Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Trafalgar Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, RP, RR, FFT

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Although the tenants submitted two separate applications for dispute resolution that were properly before me, there were only minor significant differences between these applications. The second application submitted to the Residential Tenancy Branch (the RTB) on September 5, 2020, the day after the tenants received the 10 Day Notice, included an application to cancel the 10 Day Notice. It also asked for an increase in the retroactive rent reduction they were seeking from $16,000.00 to $16,500.00 (plus the recovery of their second $100.00 filing fee for their application). The first application identified only the individual identified above as a Respondent. The second application identified only the corporate landlord identified above as a Respondent.

As Tenant SZ (the tenant) confirmed that they received the landlord's 10 Day Notice posted on their door on September 4, 2020, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received copies of both of the tenants' dispute resolution hearing packages and written evidence packages sent by the tenants by registered mail on September 12 and September 17, 2020, respectively, I find that the two landlords identified in the applications were duly served with these packages in accordance with sections 88 and 89 of the *Act.* The landlord confirmed that they had not submitted any written evidence for this hearing.

At the commencement of the hearing, the parties confirmed that the tenants surrendered vacant possession of the rental unit to the landlord on September 8, 2020. The parties also agreed that the tenants had given the landlord written permission at the time of their move-out to retain the tenants' $1,375.00 security deposit as a means of compensating the landlord for unpaid rent that remained owing for September 2020. The tenant withdrew their applications to cancel the 10 Day Notice and to obtain repairs to the rental unit. These portions of the tenants' applications are hereby withdrawn.

Issues(s) to be Decided

Are the tenants entitled to a retroactive rent reduction for the loss in value of their tenancy during the course of this tenancy? Are the tenants entitled to recover their filing fee(s) for their applications from the landlords? Should any other orders be issued with respect to this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

On March 21, 2020, the parties signed a one year fixed term Residential Tenancy Agreement (the Agreement) that was to cover the rental period from April 1, 2020 until March 31, 2020. The rental unit is a two bedroom suite within a 28 or 30 year-old multi-storey strata building. There are two bathrooms in this suite. One was described as the guest bathroom, which contains a shower stall, a toilet and a sink. The main bathroom has a shower above the bathtub, a toilet and a sink.

According to the terms of the Agreement, monthly rent in the amount of $2,750.00, plus hydro, was to be paid in advance on the first of each month. As was noted above, although the tenants paid a $1,375.00 security deposit, the tenants have given the landlord authorization to retain that deposit in lieu of rent that became owing on September 1, 2020.

The tenants' second application for a retroactive rent reduction requested a rebate of all of the monthly rent that the tenants were responsible paying from April 1, 2020 until the end of September 2020. Although they applied for a monetary award of $16,500.00 for this six month period (i.e., $2,750.00 x 6 months - $16,500.00), the parties agreed that the tenants did not pay their September 2020 rent. In the Monetary Order Worksheet, the tenants attached to their second application for dispute resolution, they itemized their $16,500.00 claim as follows:

Item	**Amount**
Rent Reduction for Loss of Use of Shower and Hole in Bathroom Wall	$5,500.00
Rent Reduction for Loss of Use of Fireplace and Gas Leak from Fireplace	8,000.00
Rent Reduction for Failure to Replace Broken Window Blinds	1,000.00
Rent Reduction for Failure to Paint Walls	2,000.00
Total Retroactive Rent Reduction Requested	**$16,500.00**

To support their application, the tenants entered into written and photographic evidence copies of a number of emails and photographs.

The tenant maintained that the shower in their second bathroom, a separate shower stall, began leaking into the rental unit below them on July 28, 2020. They notified the landlord the following day. Although the landlord arranged for workers to cut a hole in the bathroom wall to examine the problem, the tenant testified that they lost the use of this shower from July 28 until the end of their tenancy. They said that this loss of use presented problems for them as they were pregnant at the time and did not want to use the shower in the other bathroom because it presented a slipping hazard positioned as it was above the bathtub. They said that they fell once in the bathtub shower. The tenant also provided sworn testimony that there was an offensive smell emanating from the hole in the wall in the bathroom where the malfunctioning shower was located.

The landlord gave undisputed sworn testimony that the leakage from the tenant's guest bathroom to the bathroom of the occupant below the tenants was first reported to the strata council and the landlord on July 28, 2020. Based on the mould on the ceiling of the bathroom of the occupant below the tenants, the landlord said that it was clear that there had been leakage problems for some time. They said that the plumber hired by the strata observed that the leakage problem from the shower head in the rental unit had likely been causing problems for many years; however, the long-time occupant below the tenants had chosen not to raise this issue as a concern until July 28, 2020. The landlord said that the plumbing experts informed the landlord that the soldering on the interior wall of the shower had failed. The landlord was able to retain their own plumber to investigate this problem on August 19, 2020. They said that their own plumber said that based on the period of time that this problem had continued, it would take considerable work to identify a solution to the leakage problem. The landlord said that they advised the tenant on August 27, 2020, after they received an email from the tenants about this situation, that they would be taking action to resolve this leakage problem. The landlord testified that they were in this bathroom a number of times to assist the plumber in assessing the problem and there was no offensive smell emanating from the hole cut by the plumbers to investigate the source of this problem.

The tenant maintained that the day after they moved into this rental unit, they noticed the smell of gas coming from the gas fireplace in their living room. They advised the landlord of this problem by way of an April 2, 2020 email. They said that they had no use of the fireplace for the entire period of their tenancy. They gave undisputed sworn testimony that the only source of heat in the living room was the gas fireplace. They said that there was a gas leak from the fireplace that was unsafe as the fireplace could not be completely turned off.

The landlord confirmed that the tenants raised the problem with the gas fireplace with the landlord shortly after this tenancy began. The landlord gave undisputed sworn testimony that they immediately told the tenants to turn off the gas fireplace because a gas leak could be potentially dangerous and harmful to them. They gave undisputed sworn testimony that they could not get a service person into the rental unit at that time as all of the gas fireplace tradespeople were not doing house calls for many months as a result of the global COVID-19 pandemic. The landlord noted that even now, many months later, they still cannot retain qualified gas fireplace tradespeople to enter rental units. They said that they spoke with the other tenant, the tenant's husband, about the problems they were having in getting the gas fireplace serviced and inspected, and the other tenant agreed that servicing the gas fireplace was a low priority because heat would not be needed until the fall. The landlord gave undisputed sworn testimony that

they made a commitment to the other tenant that they would get the fireplace serviced before the fall when heat would once more be needed. The landlord said that the "gas leak" that the tenant was claiming was actually the pilot light, which remains on in many gas fireplaces year round.

The tenant maintained that the tenant promised when this tenancy began that the broken blinds in some of the rooms in this rental unit would be replaced. The landlord confirmed this commitment, stating that on the joint move-in condition inspection report, the landlord noted that they would replace three sections of blinds that were damaged. Two of these blinds were one inch horizontal aluminum blinds with about a half dozen slats bent. The other set of blinds were fabric blinds on the balcony door, which the landlord agreed to replace because they were not very nice. The landlord said that although measurements were taken by a blind company, the company discontinued operations for some time during the COVID-19 pandemic, and the measurements were eventually lost. They confirmed that these blinds were not replaced during the course of the tenancy.

The tenant said that the landlord made a commitment to repaint the walls of the rental unit before they moved in. Although the landlord confirmed that there was a discussion with the tenants about repainting the walls, they said that no firm time frame was provided to the tenants. The landlord said that they made it clear to the tenants that there were no current plans to repaint the rental unit, but that they might repaint them in the fall or the winter. Since the landlord only took over management of this rental suite in February 2020, they could only estimate that the existing paint job on this rental suite was conducted about three or four years ago.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that there was a loss in the value of their tenancy arising out of the landlord's failure to provide them with the services and facilities that they were anticipating receiving when this tenancy began.

Section 32(1) of the *Act* reads in part as follows:

> ***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.*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

I should first note that the terms of the written agreement that the parties entered into with respect to the tenants' authorization to allow the landlord to retain the security deposit in lieu of unpaid rent owing for September 2020 were not provided to me. For this reason, I have focussed solely on the tenants' applications for monetary awards for retroactive reductions in rent. There is no application for unpaid rent or loss of rent before me, and I do not know if the landlord is claiming entitlement to any portion of the rent that has not been paid to the landlord by the tenants for the term of this Agreement.

Although there is evidence before me that shower in the guest bathroom of the rental unit may have been leaking into the rental suite below the tenants for some time, there is undisputed evidence that the landlord was only alerted to this problem as of July 29, 2020. Given the problems associated with obtaining tradespeople such as plumbers to inspect and to repair rental suites in a strata building during the COVID-19 global pandemic, I accept that the landlord needed more than the usual amount of time to address the repair problem stemming from one of the tenants' showers. The landlord was able to retain their own plumber by August 19, 2020 to inspect the plumbing problem; identifying a solution took even longer.

While there has been some loss in value of the Agreement for the period from August 19, 2020 until the tenants vacated the rental unit on September 8, 2020, I find that the extent of the loss in value experienced by the tenants varies greatly from the $5,500.00 claimed by the tenants. During this period, the tenants still had access to a functioning shower and bathtub in their other bathroom, albeit one that the tenant preferred not to use. I also find little evidence that the12 inch by 12 inch hole drilled into the wall by the plumbers to assess the extent of the repair work required had little real impact on the

tenants given their access to the main bathroom in this rental suite was not affected by this hole.

Under such circumstances, I allow a $100.00 reduction in the value of the tenancy, a somewhat nominal amount for the problems that the tenants experienced with respect to the shower and the hole in the wall drilled in the guest bathroom that reflects some loss. I believe that this nominal award provides adequate compensation for the loss of value in their tenancy for these problems.

With respect to the lack of functionality of the gas fireplace during this tenancy, I do not find that the tenants have provided adequate evidence that they have suffered any meaningful loss in the value of their Agreement by being denied use of a gas fireplace that would normally be only irregularly if ever turned on from April 1 until they ended their tenancy prematurely on September 8, 2020. In this case, there is also undisputed sworn testimony before me that companies servicing gas fireplaces were not conducting house calls during the early days of the COVID-19 pandemic. Even if the landlord had been able to find someone to inspect and service the gas fireplace in this rental unit, this could not have happened for at least two months after it was first brought to the landlord's attention. By June 1, 2020, it would have been very unlikely that the tenants would have needed to use the gas fireplace as a means of heating their living room. Gas fireplaces, even as sources of heat, would not generally be utilized during the summer months. In addition, there is also undisputed sworn testimony that the other tenant in this dispute agreed to the landlord's proposal to have the gas fireplace serviced before the fall of 2020. The tenants moved out of the rental unit during the late summer of 2020. For these reasons, I dismiss this aspect of the tenants' application without liberty to reapply.

Both parties agreed that the landlord made a commitment to replace blinds and window coverings that had been damaged or were no longer fully performing the service for which they were intended. Although the landlord provided an explanation for why this did not happen, I do find that there has been a loss in the value of this aspect of this tenancy as a result of the landlord's failure to abide by their commitment to replace these items.

Once again, I find the tenants' claim for a monetary award of $1,000.00 for the landlord's failure to provide replacement blinds far exceeds the real loss in value that the tenants experienced as a result of a number of the slats on some of these vertical blinds being bent. I allow the tenants a retroactive rent reduction of $25.00 per month

for each of the five months when they paid rent for their tenancy. This results in a monetary award totalling $125.00 for this retroactive reduction in their rent.

I find little evidence to support the tenants' claim that they were entitled to a retroactive rent reduction for the landlord's failure to repaint the rental unit during this tenancy. The landlord said that they made no firm commitment to undertake such work and only said that they might do this in the fall or the winter months. Other than their own email requests and the tenant's sworn testimony, the tenants have supplied nothing to substantiate their claim that they are entitled to a monetary award for the failure of the landlord to repaint their rental unit. The landlord gave undisputed sworn testimony that the premises had likely been painted within the past three or four years, which would not exhaust the useful life of the existing paint job. I find no evidence that the landlord has contravened section 32(1) of the *Act,* nor any convincing evidence that the Agreement required the landlord to repaint the rental unit during any part of this tenancy. For these reasons, I dismiss this aspect of the tenants' application without leave to reapply.

Since the tenants have been partially successful in their applications, I allow them to recover the $100.00 filing fee for one of their applications.

Item	**Amount**
Rent Reduction for Loss of Use of Shower and Hole in Bathroom Wall	$100.00
Rent Reduction for Failure to Replace Broken Window Blinds	125.00
Recovery of One of the Filing Fees	100.00
Total Monetary Award	**$325.00**

Conclusion

I issue a monetary Order in the tenants' favour in the amount of $325.00, which allows the tenants a retroactive reduction in the rent they paid for the loss in value of their tenancy and to recover the filing fee for one of their applications.

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants' applications to cancel the 10 Day Notice and to obtain repairs to the rental unit are withdrawn.

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 19, 2020

Residential Tenancy Branch