Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes DRI, MNDC, OLC, RP, FF

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied to dispute a rent increase that is above the amount allowed by law, compensation for a monetary loss or other money owed, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, an order for repairs to the rental unit, and recovery of the cost of the filing fee.

The tenant, the tenant's advocates, the owner and the owner's two parents, acting as agents, attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

At the outset of the hearing, the parties confirmed receipt of the other's evidence and the landlord confirmed receipt of the tenant's application.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. I have determined that the portion of the tenant's application dealing with any claim other than the request for an order requiring the landlord to make repairs and an order requiring the landlord to comply with the Act, regulations, or tenancy agreement is unrelated to the primary issues. I have severed the tenant's application and dismissed that portion of the tenant's application, **with leave to reapply**.

Leave to reapply is not an extension of any applicable time limit.

I further note that the tenant has not received an actual notice of rent increase, from my viewing of the evidence. The evidence shows communication between the tenant and the owner about the owner needing more rent due to rising costs. Therefore, this matter is not an actual dispute under the Act, as no formal notice was given.

Issue(s) to be Decided

Is the tenant entitled to the orders sought above that were not severed and dismissed?

Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed in evidence shows the tenancy began on April 15, 2020, monthly rent is $1,250, and the tenant paid a security deposit of $625. DaM and DM are listed as the landlords. The evidence at the hearing was that DaM and DM were the agents for their son, SM, for this tenancy.

Request for repairs

In support of this part of her application, the tenant wrote the following:

> *I have contacted the landlord in writing to repair defective appliances but this was not adhered to.*

In their documentary evidence, the tenant submitted copies of written requests for repairs to appliances, regarding a dishwasher and a refrigerator. In response to that request, the tenant received a notice from one of the landlords that the rental unit was put up for sale, according to the tenant's documentary evidence.

At the hearing, the dishwasher issue had been resolved after a long delay; however, the outstanding repair request was to the microwave. The tenant explained the microwave cuts out after 5 minutes of using and she has to wait 10 minutes before it re-starts. The tenant asserted that she believes the microwave is overheating and presents a fire hazard.

The advocate, GP, said that the landlord continually delayed in making the repairs to the appliances and that the tenant should have properly functioning appliances.

In response, the landlord said their long-term technician inspected the microwave and suggested that they just keep using the appliance, as most people do not use a microwave for more than 5 minutes. Further, the tenant mentioned this issue early on and it did not seem to matter to the tenant, according to the landlord. The technician said that the microwave did not represent a fire hazard and that it should be used until it breaks, according to the landlord. The landlord submitted that the microwave is built-in, is the original and is from 2012.

The landlord filed a written response as well, detailing the responses to the appliance repair requests, along with emails and text messages between the parties.

> <u>Landlord's compliance with the Act, regulations, or tenancy agreement</u> –

In her application, the tenant wrote:

> *The landlord to review the current contract and also confirm who the actual landlord is; to me it is confusing and I do not know who the proper landlord is. I would like to be provided with a new contract indicating the current landlord. Landlord has not complied*

to the current tenancy branch rules during my tenancy. It is unclear to me if the landlord is acting as a realtor, agent or landlord.

The tenant said she just wants to know who her point of contact is for this tenancy. The tenant submitted that it is stressful not knowing who to contact, as there is contact from all three persons in attendance for this hearing.

The landlord submitted that they are well aware as a realtor and as a landlord herself not to harass the tenant; however, the tenant fails to respond to their requests for showings of the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The onus of proof is on the person making the claim, the tenant in these proceedings.

Request for repairs

Section 32(1) of the Act requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Residential Tenancy Branch Policy Guideline #1, with which I concur, states that a landlord is responsible for repairs to appliances provided under the tenancy agreement, unless the damage was caused by the deliberate actions or neglect of the tenant.

In this case, although a microwave is not listed in the tenancy agreement as an appliance provided to the tenant by the landlord, I find that because the microwave is built-in, there is an implication the appliance is provided. For this reason, I find the landlord is obligated to ensure that the microwave is in proper working order.

I do not find it reasonable that a microwave stops working after 5 minutes of use and takes 10 minutes rest before re-starting.

Under these circumstances, I find the tenant is entitled to a fully functioning microwave and I find the landlord submitted insufficient evidence that the microwave does not represent a fire hazard.

For this reason, I order the landlord to either repair the current microwave or provide a fully functioning microwave. I order that this repair or replacement be finished or replaced within one (1) week of this Decision.

Landlord's compliance with the Act, regulations, or tenancy agreement

While I accept that it might be frustrating to have contact from 3 different individuals as landlords, including one who is not listed on the written tenancy agreement, I inform the tenant that the landlords are listed in the written tenancy agreement. Until notified, the two landlords listed on the written tenancy agreement remain her point of contact.

I do not find it necessary to order the landlords to comply with the Act or tenancy agreement, as I have not found a specific breach. However, I encourage the landlords to be consistent in who makes contact with the tenant.

As the tenant had some success with her application, I grant the tenant the recovery of the $100 filing fee. **I authorize** the tenant a one-time rent reduction in the amount of **$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Information for the parties –

During the hearing, I heard testimony and evidence which I find makes it necessary to provide information to the parties.

As there was an indication the owner is listing the rental unit for sale, I inform the parties that they may wish to review their rights and obligations by reading the following from the RTB website:

https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/during-a-tenancy/selling-a-tenanted-property

I also inform the owner/landlord that the monthly rent may only be increased as required under Part 3 of the Act and Part 4 of the Residential Tenancy Regulations.

Conclusion

The tenant's application is partly successful as noted above and the tenant has been granted recovery of the filing fee of $100.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 24, 2023

Residential Tenancy Branch