Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, RR, PSF, LRE, OLC

Introduction

The Tenant filed an Application for Dispute Resolution on January 11, 2023 seeking:

a. compensation for the cost of emergency repairs they made during the tenancy;
b. compensation for monetary loss/money owed;
c. disputing a rent increase that is above the amount allowed by law;
d. a reduction in rent for repairs/services/facilities agreed upon but not provided;
e. repairs made to the rental unit, after contacting the Landlord to make repairs still not completed;
f. the Landlord's compliance with the legislation and/or tenancy agreement;
g. reimbursement of the Application filing fee.

The matter proceeded by way of a conference call hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on May 4, 2023 and May 10, 2023. In the conference call hearing I explained the process and provided the participants the opportunity to ask questions.

Preliminary Matter – parties' service of evidence

The Landlord, as the Respondent in this hearing, provided evidence in this matter to the Residential Tenancy Branch two days before the hearing and sent that to the Tenant on that same date. This was against Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure*; therefore, I exclude this evidence from consideration in this matter.

The Tenant did not definitively prove that they provided their evidence to the Landlord as required by Rule 3.1 and Rule 3.14. The Landlord in the hearing stated they did not receive this information; on a balance of probabilities, I found the Tenant could not prove otherwise. I exclude the Tenant's evidence for this reason in the hearing.

I provided both parties the opportunity to introduce the issues, and either side provided submissions and direct statement testimony on these matters.

Issues to be Decided

a. Is the Tenant entitled to compensation for the cost of emergency repairs?

b. Is the Tenant entitled to compensation for monetary loss/other money owed, pursuant to s. 67 of the *Act*?

c. Did the Landlord impose a rent increase that runs contrary to the *Act*?

d. Is the Tenant entitled to a reduction in rent for repairs/services/facilities agreed upon but not provided, pursuant to s. 65 of the *Act*?

e. Is the Landlord obligated to make repairs in the rental unit?

f. Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

g. Is the Tenant eligible for reimbursement of the Application filing fee?

Background and Evidence

The parties reviewed the basic terms of the tenancy agreement that was in place since April 7, 2021. The rent amount of $2,300 is payable on the 15th of each month. The Tenant paid a security deposit of $1,150.

In reviewing the basic information about the agreement at the start of the hearing, the Landlord noted laundry was "in-house", and the rent amount included utilities. The Landlord stated their feelings that utilities should *not* be included in the rent amount; however, they acknowledged that the agreement was not completed to state that. In a

summary statement, they stated this was “accidentally indicated by the Landlord”, and utilities were specifically checked “in error.”

a. compensation for emergency repairs

On their Application, the Tenant listed $150 as the amount for

> reimbursement for repairs I made to the laundry vent fan that was damaged by the vent cleaning company who do cleaning each year – Labour and materials - $150.00”

In the hearing, the Tenant described yearly vent cleaning that required the vent fan removal in their rental unit. This work is regularly undertaken by the strata in the building. The Tenant described not being able to do laundry due to this problem. The Tenant reattached the vent fan on their own and the amount of $150 they provided on their Application is “just an arbitrary figure”.

The Landlord stated they were never told of this problem. They submit this problem is easily fixed and does not amount to $150. Additionally, from the Landlord’s perspective this was not a life or death situation, *i.e.*, not an emergency.

b. compensation for monetary loss/other money owed

The Tenant provided the amount of $3,745.09 for BC Hydro bills they paid from April 15, 2021 to December 12, 2022. The Tenant pointed to the tenancy agreement as setting out that heat and electricity are included in the rent amount of $2,300.

The Tenant would follow a method for paying these utilities: a bill from the utility provider would come to the Tenant, and the Tenant would pay. The Tenant only realized they should not have been paying this in December 2022. They had a “big discussion” with the Landlord about this, prompted by the Landlord sending a large city-centred utility bill. This forced the Tenant to have another look at their tenancy agreement and what it provides for in terms of utilities and what is included in the rent. The Tenant also pointed to the same billing period where the Landlord included a strata-imposed amount to the Tenant.

The Landlord indicated this was an “oversight:”, and they had “accidentally indicated” that utilities were included in the rent. In the hearing, the stated that they accepted responsibility for utilities amounts of “actuals, when presented.”

c. rent increase

The Tenant set out the amount of $58.50 on their Application, adding:

> 2% is 2023 increase allowable. Landlord is raising it $46.92 plus $58.50. The maximum allowable rent increase is $46.00.

The Tenant presented no record and made no statement in the hearing to indicate they overpaid any rent amount because of an increase.

The Landlord clarified the amount of rent increase going forward was $46. This was after a call to the Residential Tenancy Branch.

d. reduction in rent

On the Application, the Tenant listed an issue with increased electricity costs paid when the fireplace was not working, unable to shut off. The Tenant proposed the amount of $500 as an estimate of their additional electricity costs, applying to have the amount reduced from future rent payments.

In the hearing the Tenant summarized the issue and stated the Landlord had paid them back for this repair. The Tenant stated the issue was resolved.

The Landlord confirmed they paid $975 dollars over 2 visits for this issue.

e. repairs

On the Application, the Tenant stated as follows:

> The mirrored closet doors at the entrance are broken and are in need of fixing. Duct tape is holding them together. landlord was advised long ago and there is no plan to fix them. The laundry bifold door tracking is broken and the landlord has not made arrangements to fix it.

In the hearing, the Landlord provided that they had contact the Tenant for repair of the laundry door, but the Tenant had not made themself available. The Landlord remains prepared to undertake this repair.

On the other extant issues, the Landlord pledged that they could undertake repairs as well. The Landlord reiterated their request that the property be used respectfully, and

emphasized open communication with the Tenant regarding the state of things in the rental unit.

f. Landlord's compliance with the tenancy agreement/Act

On their Application, the Tenant raised a few issues:

> Landlord is billing me for charges they received from the strata for damage to a common area hallway wall. They accuse me of damaging this without any proof. This is ridiculous and unjust. The landlord initially agreed the strata was wrong but has given up fighting them and decided to bill the tenant. More strata penalty charges are being passed along which are incorrect. Landlord needs to fight the strata concerning this matter.

The Landlord stated they were open to input from the Residential Tenancy Branch on handling municipality-imposed utilities invoices to a Tenant.

The Landlord also spoke to their dealings with the strata, and named specific costs imposed by the strata for the Tenant's damages and other bylaw infractions during their move into the rental unit. This involved the Landlord presenting their case to the strata in a form of dispute resolution. The Landlord recalls the Tenant stating they would pay the charges and fines; however, the Tenant then refused. The Landlord ended up paying for fines associated with Tenant's move into the rental unit, though did not pay for alleged damages caused by the Tenant during the move into the rental unit.

The Tenant in the hearing provided their recall of the incident for which the strata took issue and chose to impose fines as per the strata's bylaws.

g. Application filing fee

The Tenant paid $100 for this Application on January 7, 2023.

Analysis

a. compensation for emergency repairs

The *Act* authorizes reimbursement where a tenant presents a landlord with a written account of the emergency repairs, accompanied by a receipt for the amount claimed.

An “emergency repair” is one which is urgent, and necessary for health/safety, and made for purpose of repairing:

- major leaks,
- damaged/blocked water/sewer pipes/fixtures,
- the primary heating system,
- damaged locks, or
- the electrical systems.

I find the ventilation fan reattachment does not qualify as an emergency. The Tenant did not prove with evidence that they paid an amount for this relatively minor piece of work. I dismiss this piece of the Tenant’s Application without leave to reapply.

b. compensation for monetary loss/other money owed

A party that makes an application for compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

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

The Tenant appears to have a legitimate claim for utilities amounts they paid through 2022, and that runs counter to what is set out in the tenancy agreement. For this hearing, I find the Tenant did not prepare an adequate calculation of the amount they feel is owing. They provided an amount -- $3,745.09 – on the Application, but there is no line-by-line itemized accounting for that amount. The Tenant’s evidence submitted to the Residential Tenancy Branch – which I have not examined due to non-disclosure – is a series of screenshots showing updates to their utilities accounts. I am dismissing this piece of the Tenant’s claim for lack of full particulars that are required as per s. 59(2)(b) of the *Act*. In sum, I will not make the calculations, or do the accounting, on the Tenant’s behalf.

In summary, the Tenant did not provide a calculation of the claimed amount of $3,745.09; therefore, there was not sufficient evidence of their monetary loss. On this particular piece of the Tenant's Application, I grant leave to reapply.

c. rent increase

I find the parties settled this matter fully, as briefly reviewed in the hearing. I grant no compensation to the Tenant because they did not make any overpayment.

d. reduction in rent

In the hearing each party confirmed the issue surrounding the cost of fireplace repair was no longer an issue. I find the parties settled this matter prior to the hearing.

e. repairs

I find the Landlord accepted the need for repairs on specific items listed by the Tenant. I find the issue of items requiring repair was settled between the parties.

The *Act* s. 32 sets obligations on both parties to repair and maintain. I remind the parties that a tenant must repair damage that is caused by the actions or neglect of a tenant, or a person permitted in the rental unit by a tenant. This would be something unreasonable, *i.e.*, outside reasonable wear and tear. It is reasonable for a landlord to regularly inspect the rental unit for condition status updates.

It is fundamental to a successful ongoing tenancy for the parties to remain open on communication regarding repairs. I do commend the parties for speaking openly in the hearing and reaching an agreement.

***f. Landlord's compliance with the tenancy agreement/*Act**

The matter of municipality-imposed utilities amounts is case-specific, and I make no findings on the legality of the Landlord and Tenant having an agreement on that issue. It appears from each person's statements in the hearing that there is no agreement on that separate issue. Without specifics, and no details on whether a municipality allows a tenant to be assigned as the person responsible for those amounts, I decline to provide an opinion on that separate matter. Either the Landlord or the Tenant may consult further with the Residential Tenancy Branch for information on this discrete issue.

In this present situation, I find the Landlord did not attempt to end the tenancy for this reason, and there was no evidence of the Landlord imposing such utilities on the Tenant unilaterally. Therefore, I find the Landlord did not breach the *Act* or the tenancy agreement and I grant no relief to the Tenant on this point.

For the matter concerning the rental unit property's strata, I find the Tenant was seeking clarification on whether the Landlord can impose fines or costs from incidents that the strata may find to be violations of bylaws or rules.

I informed the Landlord and Tenant in the hearing that I was not in the position to resolve the matter involving the strata; both parties acknowledged they understood this.

I direct the parties' attention to s. 131 of the *Strata Property Act*:

> 1)If the strata corporation fines a tenant or requires a tenant to pay the costs of remedying a contravention of the bylaws or rules, the strata corporation may collect the fine or costs from the tenant, that tenant's landlord and the owner, but may not collect an amount that, in total, is greater than the fine or costs.
>
> (2)If the landlord or owner pays some or all of the fine or costs levied against the tenant, the tenant owes the landlord or owner the amount paid.

There is nothing in the *Act* that contravenes this individual section of the *Strata Property Act*. Owners, tenants, occupants, guests and visitors must comply with a strata's bylaws and rules. This includes the Tenant in this present scenario. The *Strata Property Act* defines "tenant" as a person who rents part of a strata lot; in this case, this is the rental unit. Under the *Strata Property Act*, the Tenant has a right to obtain the bylaws/rules, and a "Form K: Notice of Tenant's Responsibilities" from the Landlord.

Regarding the application of the *Act* (that is, the *Residential Tenancy Act*) in this current scenario, I find that the Landlord is not violating any section of the *Act*. I find the parties are in league on their issues with the strata's imposition of fines or other penalties. I encourage the parties to examine the possibility of taking up this matter with the Civil Resolution Tribunal; that is the tribunal that has jurisdiction over most strata claims in BC.

g. Application filing fee

I find this hearing was necessary for each party to state their positions on various matters concerning this tenancy. Because of this, I find the Tenant is eligible for reimbursement of the Application filing fee. I authorize the Tenant to withhold the amount of $100 from one future rent payment.

Conclusion

For the reasons set out above, I dismiss the Tenant's Application, and note the parties reached settlement on a few of the issues. On the matter of compensation for utilities amounts paid, I grant the Tenant leave to reapply on that single issue.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 8, 2023

Residential Tenancy Branch