Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, RR, MNDC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to have the landlord make emergency repairs; other repairs; to reduce rent for services agreed to but not provided; and for a monetary order.

The hearing was originally convened on November 4, 2011but due to time constraints was adjourned to November 17, 2011 for completion.

The hearings were conducted via teleconference and were attended by the tenant and the landlord and his agent.

During the first hearing the landlord requested an adjournment because he received the tenant's Application and evidence on the same day as the deadline for submission of evidence to the Residential Tenancy Branch and to both parties.

In addition, the landlord had submitted evidence to the hearing after the deadline and as such could not be considered in this hearing. Ultimately all parties agreed to continue with the hearing at that time.

When I determined that we must adjourn due to time constraints I allowed both parties to provide additional evidence no later than November 10, 2011. The landlord provided an additional binder of evidence by that deadline and an additional fax submitted on November 15, 2011.

I have, for the purposes of this decision considered the binder but not the fax submitted after the November 10, 2011 deadline. During the reconvened hearing the landlord used the material from the faxed submission of November 15, 2011 as speaking notes for his testimony.

At the outset of the second hearing the landlord raised two additional preliminary matters. The first matter was that the tenant failed to provide any explanation as to why he amended the dollar amount of his claim in his Application for Dispute Resolution from $5,000.00 to $10,483.00.

I advised both parties that there was no requirement for the tenant to explain the amendment but rather the tenant must provide sufficient evidence to prove his claim in its totality, regardless of the amount noted.

The second preliminary matter raised by the landlord was that in the evidence the tenant served the Residential Tenancy Branch (RTB) there were two letters that the landlord had not received in the original service of documents.

The first letter was dated June 2, 2008 for which the landlord testified he did not receive until November 4, 2011 after the original hearing. The landlord testified that since he has received it he has had the opportunity to review it and is prepared to speak to it in this hearing.

The second letter dated April 29, 2011 was provided by the landlord in his original evidence package but it only included the tenant's signature dated August 1, 2011. The copy provided by the tenant to the RTB also included the landlord's agent's signature dated August 1, 2011. The landlord testified that he has reviewed the letter and is prepared to speak to it in this hearing.

As the landlord has had all of the tenants evidence since November 4, 2011 and the reconvened hearing was held on November 17, 2011, I find the landlord has been provided with all of the evidence in accordance with the Residential Tenancy Rules of Procedure of at least 5 days prior to the hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to make emergency repairs and to make other repairs; to an order authorizing a rent reduction for repairs, services or facilities agreed upon but not provided; to a monetary order for compensation for damage or loss and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 32, 33, 40, 41, 42, 43, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 1, 2007 for a month to month tenancy beginning on March 1, 2007 for a monthly rent of $800.00 due on the 1st of each month with a security deposit of $400.00 paid on February 7, 2007.

While the original rent was $800.00 the landlord has provided copies of two rent increase notices. The first notice was issued by the landlord on February 28, 2008 for an increase effective on June 1, 2008 in the amount of $29.50 per month (3.7%). The notice is given in the form provided on the RTB website and notes the tenant's rent was first established on March 1, 2007.

The second notice was issued by the landlord on January 28, 2011 for an increase effective on May 1, 2011 in the amount of $19.00 per month (2.3%). The notice is given

in the form provided on the RTB website and notes the tenant's rent was last increased on June 1, 2008. The total rent at the time of this hearing was $848.50 per month.

The tenant holds, in his written submission and testimony, that the landlord does not have the right to increase the rent if the basic maintenance and safety repairs are not being addressed in a timely matter or at all.

The tenant asserts that on March 1, 2007 when he moved into the rental unit the then property manager promised the following actions:

- The landlord would paint the interior of the rental unit within 3 months;
- The window sills would be repaired and painted;
- The bathtub would be re-enamelled (required as there were two chips, as noted in the move in Condition Inspection Report;
- The shower tiles would be caulked;
- The exterior handrail would be properly fixed to the side of the building;
- The exterior facing to the balcony would be repaired and replaced with new siding;
- A cracked floor tile would be repaired and sealant applied;
- Algae build up to be power washed off the balcony;
- A bicycle storage room was to be constructed;
- A dishwasher would be installed; and
- The shower head would be installed higher than its current location.

The landlord contends his property manager at the time would not have made any of these promises as the unit had just been renovated within 14 months of the start of this tenancy. Specifically with regard to painting, the landlord testified that their practice is to paint a unit prior to the start of tenancy for ease of work and to minimize inconvenience to the tenant.

If painting is still required, for some reason, after the start of a new tenancy, the landlord testified it would be completed within a few weeks of the start of the tenancy, so that the new tenant could leave their belongings in the centre of the room and before they start unpacking belongings.

In addition since the start of the tenancy the tenant states he has requested the following repairs:

- To replace the overflow drain in the bathtub;
- Repairs to the ceiling, walls and sink in the bathroom resulting from a flood from a rental unit above the tenant's; and
- The abatement of mould found in the unit.

The tenant testified he verbally requested the repairs to the ceiling and walls in the bathroom and was told it would be 3 months to complete. The tenant submits that he

made the repairs a week later. The tenant also testified that he replaced the dining room light fixture as the original had broken when a flood from the kitchen in the rental unit above his settled in the light globe.

The tenant testified that since he filed his Application for Dispute Resolution the landlord has screwed the handrail on the balcony but the tenant is unsure if it is yet safe and replaced the overflow drain cover.

The tenant asserts that as none of the promises that were made by the landlord's agent have been kept and the additional repairs that have been required during the tenancy have not been made (except as noted above) the tenant seeks the compensation either for loss in the value of the tenancy or for the cost of making the repairs himself, as follows:

Description	Amount
Rent increase refunds	$1532.50
Bathroom ceiling repairs (labour)	$75.00
Bathroom shelf & wall repairs (labour and supplies)	$135.00
Bathtub repair not made (loss of value)	$1,375.00
Interior walls/window sills (labour and supplies)	$270.00
Dining Room light fixture	$45.50
Balcony Railing (loss of value)	$4,125.00
Interior not painted (loss of value)	$625.00
Bike room not built (loss of value)	$1,375.00
Rotten front balcony siding(loss of value)	$825.00
Total	$10,383.00

The tenant confirms the promises were made verbally and that requests for repairs were also verbal requests. The landlord submitted a copy of the move in Condition Inspection Report signed by the parties on March 1, 2007 noting generally good condition, with the exception of two chips in the bathtub. Neither party provided copies of any specific written requests with the exception of two letters from the tenant.

In a letter dated June 2, 2008 the tenant writes to the current property manager indicating the tenant's intention to write to the landlord in regard to the rent increase that took effect June 1, 2008.

In particular the tenant writes that when they entered into the tenancy agreement the then property manager was going to deal with: the balcony railing; balcony baseboards; ceiling crack in the shower; water damage and minor paint repairs around window ledges; and that the unit was not painted prior to the start of the tenancy.

The tenants suggest that because these items were not attended to the landlord is not justified in applying a rent increase to the unit. The tenant also specifically asks the

landlord to repair a faulty radiator. There is no mention of the radiator in the tenant's claim in this Application.

In the second letter dated April 29, 2011 but signed by both the tenant and the landlord's agent on August 1, 2011, the tenant reiterated the promises he asserts the landlord's agent made at the start of the tenancy; sets out his time table for completion of the repairs.

The tenant also in this letter requests a full renovation to the bathroom as he states it is unhealthy due to mould he has found in the unit; that he seeks a rent reduction of $400.00 per month until repairs are complete; and requests reimbursement for repairs that the tenant himself has made.

Both parties provided substantial photographic evidence, the tenant provided photographs from throughout the tenancy and the landlord provided photographs taken on November 5, 2011. Within the tenant's photographs is one photograph of what the tenant identifies as mould evidence behind damage and during his testimony the tenant stated there is also mould behind a shoe cupboard in his entry way that backs on to the bathroom wall that had been flooded.

Analysis

Section 33 of the *Act* defines emergency repairs as urgent; necessary for the health or safety of anyone or for the preservation of the residential property and made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that vie access to the rental unit; or the electrical systems.

Despite applying for an order to have the landlord make emergency repairs, I find that none of the repairs requested by the tenant fall under the definition of emergency repairs..

Part 3 of the *Act* consists of Sections 40, 41, 42, and 43 provides the legislative framework for the imposition of rent increases in an existing tenancy. Section 42 stipulates that a landlord must not impose a rent increase for at least 12 months from either the start of the tenancy or the last rent increase; that notice of the increase must be provided 3 months in advance of the increase; and that the notice must be in the approved form (available on the RTB website).

Section 43 stipulates that a landlord may impose a rent increase only up to an amount calculated in accordance with the regulations; ordered by the director; or agreed to by the tenant in writing. This section goes on to say that a tenant cannot make an Application to dispute a rent increase that complies with Part 3.

For the years the landlord imposed rent increases (2008 and 2011) the allowable rent increases calculated in accordance with the regulations were 3.7% and 2.3%,

respectively. According to the undisputed evidence submitted I find the rent increases comply with Part 3 of the *Act* and as such the tenant cannot dispute their imposition.

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:

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.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes. As such, the burden of proof lies with the party making the claim about the terms, in the case before me the tenant.

With respect to the tenant's claim that the landlord's agent promised the following repairs, services or facilities:

- The landlord would paint the interior of the rental unit within 3 months;
- The window sills would be repaired and painted;
- The bathtub would be re-enamelled (required as there were two chips, as noted in the move in Condition Inspection Report;
- The shower tiles would be caulked;
- The exterior handrail would be properly fixed to the side of the building;
- The exterior facing to the balcony would be repaired and replaced with new siding;
- A cracked floor tile would be repaired and sealant applied;
- Algae build up to be power washed off the balcony;
- A bicycle storage room was to be constructed;
- A dishwasher would be installed; and
- The shower head would be installed higher than its current location.

The tenant has indentified the agent made a verbal promise that the landlord now disputes, and in the absence of any additional corroborating evidence that such a promise existed I find the tenant has failed to establish that any of these items were promised as part of the tenancy or the contract.

I note that the Condition Inspection Report provided simply records the condition of a rental unit at the start (and/or end) of a tenancy. Unless specifically noted in the Report it is not a list of items to be repaired. In this case, the listing of the chips in the bathtub

is not considered a commitment to repair the chips but simply a record that they existed at the start of the tenancy.

Further, I note that throughout all of the evidence submitted by both parties, the only written requests forwarded to the landlord are the letters dated June 2, 2008 and April 29, 2011 but signed by the tenant and property manager on August 1, 2011.

I find the letter dated June 2, 2008 does not request the landlord to make any repairs other than that of the radiator, which is not a part of this claim. I find that while the letter stipulates that when the tenants entered into the tenancy agreement the property manager promised some "work items and repairs", however it does not state anywhere in the letter that those items and repairs were still outstanding and the tenant wanted the landlord to deal with them.

Additionally, this letter does not identify all of the items noted in the tenant's Application that he states were promised at the start of the tenancy. Items that, from the tenant's testimony, were of significant importance to the tenant, such as the provision of a bike storage room are not mentioned.

In essence, I find the first written request, and therefore record, by the tenant to provide the repairs, services and/or facilities that he holds were promised to him at the start of the tenancy are outlined in the letter dated April 29, 2011 and signed by the tenant and property manager on August 1, 2011.

For the reasons above, I find the tenant has failed to establish any of these promises were made prior to or at the start of the tenancy and therefore constitute a part of any contractual obligation of the landlord. As such, I find the tenant has failed to establish a violation of the *Act*, regulation or tenancy agreement.

Section 32 requires a landlord 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.

The tenant has provided no evidence to suggest any of the outstanding requested repairs are contrary to health, safety or housing standards required by law, such as municipal bylaws or provincial construction standards. In addition, I find the tenant has failed to establish through his testimony and photographic evidence that a health issue exists resulting from mould.

In relation to the tenant's claim for compensation for the dining room light fixture, the tenant provided no testimony that he discussed the problem of water in the light fixture with any of the landlord's agents.

In addition that tenant provided no evidence of the value of the replacement fixture. I find the tenant has failed to provide sufficient evidence to establish he suffered a loss

resulting from a violation of the *Act*, regulation or tenancy agreement and failed to establish the value of any loss.

While Section 33 (emergency repairs) of the *Act* allows a tenant to make emergency repairs if the tenant has attempted to contact the landlord twice and then has given the landlord a reasonable time to make those repairs, Section 32 (obligations to repair and maintain) does not contain the same provision.

As the repairs the tenant made were not for emergency repairs, and in conjunction with the tenant's testimony that the landlord intended to make, at least some of those repairs (bathroom) within 3 months, I find the tenant had no authority to make the repairs and expect compensation from the landlord upon completion.

In relation to the outstanding repairs outlined by the tenant in the first hearing as follows:

- Bathtub needs replacement or re-enamelled;
- Floor tiles need to be re-sealed;
- Shower head moved up one foot;
- Ceiling repair and lower wall in bathroom require repair;
- Bath tiles replacement; re-grouting because of mould;
- All mould professionally removed;
- A health inspection needs to be carried out;
- Bathroom door jamb needs to be repaired; and
- Exterior wood panel on the base of the balcony above this rental unit;
- Installation of a dishwasher;
- Bike storage facility; and
- Painting of remaining white walls.

I find as follows:

For all items related to the tenant's assertion of mould, I find the tenant has failed to provide any evidence that mould exists in the bathroom, with the exception of one photograph.

From the photographic evidence and testimony of both parties I find no need for repairs to the bathroom door jamb, ceiling or walls or floor tiles. I find the tenant's request to move the shower head to be a modification rather than a repair.

The landlord's requirements under Section 32 are to provide a unit that is, having regard for the age, character and location of the rental unit suitable for occupation by a tenant. As this building is 35 years old, I find that it is likely the enamelled surfaces will have chips in them.

The tenant has provided no indication of how the chips in the bathtub have impacted the value of the tenancy and as such, I find the request to have the tub enamelled or replace exceeds the landlord's obligations under Section 32.

I also find that based on the photographic evidence submitted by both parties re-painting of the walls in the rental unit is unnecessary and again exceeds the landlord's obligations to provide and maintain a rental unit suitable for occupation by a tenant.

While I accept that the exterior wood panel of the balcony above this tenant's requires repairs, I am not convinced that the repair is a requirement of this tenancy but rather a requirement of the landlord to maintain the exterior envelope of the entire residential property and of such insignificance to this tenancy that it does not warrant an order to have the landlord make the repair.

As I have found above that the tenant has failed to establish there was an agreement on the part of the landlord to provide bike storage, I now find there is no obligation for the landlord to provide one. Further, as neither party provided any testimony or evidence with regard to the installation of a dishwasher, I find the tenant has failed to establish the landlord is obligated to do so.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

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 18, 2011.

Residential Tenancy Branch