



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order compelling the landlord to perform repairs and an order authorizing them to reduce their rent. Both parties participated in the conference call hearing with both tenants represented by the tenant KA. In this decision where I refer to the tenants in singular form, it is KA to whom I refer.

The landlords submitted documentary evidence to the Residential Tenancy Branch on May 2, less than one week before the hearing. The tenant testified that she received the documents on May 5. The tenant testified that she had opportunity to review the evidence, needed to opportunity to provide further documentation in response and was prepared to proceed with the hearing.

The tenants originally claimed compensation for lost waters and the costs of preparing for this hearing. At the hearing, the tenant advised that she did not wish to proceed with that part of her claim. I therefore consider that part of the claim to have been withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Should the landlord be ordered to perform repairs?
Should the tenants be authorized to reduce their rent?

Background and Evidence

The parties agreed that the tenancy began in July 2009 and that the rental unit is an apartment in a heritage home.

The tenants listed a number of repair issues in their application and at the conclusion of her testimony during the hearing, KA clarified that they are seeking repairs as follows: a new refrigerator, repairs to cracks in all walls and the ceiling, repainting and a laminate

resurfacing of the hardwood flooring. Although photographs of other issues were provided and testimony was given about other issues, as the tenant identified these 4 issues as the substance of her claim, this decision only addresses those issues and does not recount testimony or evidence about other issues.

The tenant testified that the refrigerator is almost 18 years old and testified that there is mold and dirt on the handle, the handle appears to be coming off, the freezer hums loudly and she is concerned about the wiring in the back of the refrigerator. She stated that the back of the refrigerator is extremely dusty and she is afraid to clean it because of concerns about electrocution. She further testified that the refrigerator is next to the wall of the bathroom and the humming interferes with her family's bathing as well as their sleep. The tenant testified that Residential Tenancy Policy Guideline #40 (the "Guideline") which provides the useful life of building elements, identifies the useful life of refrigerators as 15 years. She argued that the landlord should be obligated to replace the refrigerator after it has expended its useful life and stated that she wished to have a new, energy efficient refrigerator as she was not comfortable using a refrigerator which had previously been used by someone else. The landlord testified that the refrigerator appears to be fully functional and they see no reason to replace it. They further testified that some noise is to be expected from appliances.

The tenant testified that the hardwood flooring in the unit is extremely worn and badly damaged. She stated that when her daughter was born in 2011, she became concerned about her daughter crawling and walking on the flooring. She testified that part of the flooring is so exposed, it has yielded slivers which have hurt her daughter. The tenant asked that the landlord be ordered to apply a varnish or laminate surfacing to the flooring in order to address what she believes to be a significant health and safety issue. The landlord testified that the flooring is the original plank flooring and because the home is a heritage home, the application of laminate to the flooring would destroy the heritage quality. They stated that the tenants repeatedly complained about the appearance of the flooring, but until they filed their application for dispute resolution, there had been no mention of slivers. The landlord expressed doubt that the flooring caused slivers. The parties agreed that the landlord had filled and sanded a hole in the floor of which the tenants had complained.

The tenant testified that there are numerous areas of the walls and ceiling which require repairs and provided photographs showing cracks in the walls and ceiling. A number of cracks are evidenced near corners and around shelving and in one area of the ceiling, wide, clear tape has been applied to a crack. The tenant testified that a shelf in her daughter's room had come off the wall and despite repeated requests of the landlord to address the issue and remove the remaining piece of wood which she believed posed a

serious safety threat to her child. The landlord eventually repaired the issue, but the repair occurred approximately 2 months after it was reported. The tenants seek an order compelling the landlord to repair all cracks and damage to the walls and ceiling. The landlord took the position that these issues are cosmetic, not a priority and that the tenants' health and safety are not in jeopardy.

The tenants seek an order compelling the landlord to repaint the rental unit. They referenced the Guideline which identified the useful life of interior paint as 4 years and stated that it had been 5 years since the unit had been partially painted and some parts of the unit had not been painted for much longer than that. The landlord took the position that these issues are cosmetic and not a priority and that there were no health or safety issues.

The tenants seek a monetary order of \$1,025.00 representing 25% of the rent paid over the past 3 months as they believe they have lost quiet enjoyment of the rental unit. KA testified that she has experienced severe mental distress as a result of her service requests having been ignored by the landlord and they have been bothered by the constant humming of the freezer.

The tenants also seek a reduction in rent, but when I specifically asked KA to quantify the amount of that reduction, she stated that a rent reduction was not her primary focus.

Analysis

Section 32(1) of the Act provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

32(1)(a) complies with the health, safety and housing standards required by law, and

32(1)(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, the rental unit is a 100 year old heritage home and I find that the age and character of the home mean that there will be features of the home which will appear weathered. In order for the tenants to prove that repairs are required, they must prove that the landlord has failed to comply with section 32 of the Act. Although the tenants referenced the Guideline, I do not accept their argument that items have to be replaced after their useful life has been expended. The Guideline specifically states that it is to

be used when considering applications for additional rent increases and determining damages to a rental unit. There is nothing in the Act or the Guideline requiring landlords to replace each building element when it approaches the age of useful life identified in the Guideline.

I am not satisfied that the refrigerator requires repair. Although it is an old refrigerator and is clearly dusty, there is no evidence before me that it does not function properly to refrigerate and freeze the tenants' food. KA suggested that the refrigerator poses a safety risk, but provided no objective evidence to support her fears. The tenants claimed that it produces a humming noise which is bothersome, but the landlord has attended the unit and has not noted the same noise. The tenants are required to prove their claim on the balance of probabilities and I am unable to find that it is more likely than not that the refrigerator is humming excessively loudly. I therefore dismiss the claim for an order that the landlord replace the refrigerator.

The tenants claimed that the hardwood flooring poses a health and safety risk, but I am unable to find on the balance of probabilities that such a risk exists. The appearance of the floor may be unappealing, but it is in keeping with the character of the home as a heritage home and I am not persuaded that the floor is producing splinters. The tenants wrote to the landlord that "up until now we were willing to live with the poor condition of the floors as long as the floors were safe and we were not getting splinters or scrapes from wood and nails." This is the only mention of splinters in the tenants' previous correspondence with the landlord and it does not say that there are now splinters, but that there have not been splinters in the past. The tenants did not allege that the floor produced splinters until they applied for arbitration and the landlord disputes that the floor yields splinters. I find that the tenants have not proven that there is a health and safety risk and I therefore dismiss the claim for an order for the repair of the flooring.

I accept that the walls and ceilings have a significant number of cracks. Many of these are, as the landlord described, cosmetic. However, there is one crack on the ceiling which is taped in order to prevent debris from falling. I find this to be a health and safety issue. **I order the landlord to perform repairs to the affected parts of the ceiling and repaint those areas and I order that those repairs be completed no later than June 30, 2015.** I am unable to find that other areas present a health and safety issue and therefore will not order that other wall repairs or repainting take place. However, as these are long term tenants who by the landlord's description are good tenants and as they plan to remain in the rental unit, I strongly encourage the landlord to consider repairing and repainting the affected areas of the walls, particularly given the possibility that safety issues could arise from these areas in the future.

As for the tenants' claim for compensation, I am not satisfied that the landlord has breached the Act to an extent that compensation is warranted. The tenants characterized every dissatisfaction they have with the rental unit as a health and safety issue when the large majority of these issues are nothing more than cosmetic problems. I am unable to find that the crack in the ceiling has caused the tenants a loss of quiet enjoyment to a degree that would attract compensation. Although KA claimed that she has suffered mental distress as a result of the landlord's failure to respond positively to her requests, I find that the majority of her stress arose because she believed the issues reported to be more sinister than they actually were. It is true that the landlord took an unreasonably long time to respond to her request to repair the area in her daughter's room from which the shelf had fallen, but I am not satisfied that any threat was posed by that delay. I find that the tenants have not proven an entitlement to compensation and I therefore dismiss the claim.

As the tenants were unable to quantify their claim for a rent reduction, I decline to order that reduction. Should the landlord fail to complete the repair ordered above, the tenants may file another application for dispute resolution claiming compensation.

As the tenants have enjoyed limited success in their claim, I find they should recover just \$10.00 of their filing fee. They may deduct \$10.00 from a future rental payment.

Conclusion

The landlord is ordered to repair and repaint the affected areas of the ceiling. The tenants may deduct \$10.00 from a future rental payment.

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: May 07, 2015

Residential Tenancy Branch

