



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants under the *Residential Tenancy Act* (the “Act”) seeking a rent reduction for repairs, services or facilities agreed upon but not provided, and recovery of the filing fee.

The hearing was originally convened by telephone conference call on August 24, 2018, at 11:00 AM and was attended by the Tenants, the Landlord, and the Landlord’s interpreter, all of whom provided affirmed testimony. The hearing was subsequently adjourned due to the complexity of the issues and the time constraints of the hearing. An Interim Decision was rendered on August 28, 2018, and the reconvened hearing was set for October 25, 2018, at 9:30 AM. A copy of the Interim Decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”) in the manner requested at the first hearing. For the sake of brevity, I will not repeat here the evidence and testimony summarized or the findings of fact made in the Interim Decision. As a result, the Interim Decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on October 25, 2018, at 9:30 AM and was attended by the Tenants, their son, the Landlord, the Landlord’s interpreter, the Landlord’s spouse, and the Landlord’s son who was acting as his agent. All testimony provided was affirmed. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Are the Tenants entitled to compensation in the form of an additional rent reduction for repairs, services or facilities agreed upon but not provided?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the tenancy started on November 6, 2011, and that rent in the amount of \$1,050.00 is due on the 6th day of each month. The parties agreed that these are the correct terms of the tenancy agreement and that rent has not been increased since the start of the tenancy. The parties also agreed that the tenancy ended on August 27, 2018, when the Tenants vacated the rental unit.

The parties agreed that the Tenants were entitled to use of a washing machine in the rental unit as part of the tenancy agreement, that the washing machine has required repairs since early July of 2018, that the Landlord was aware of the need for these repairs, that the Tenants promptly reported the need for these repairs to the Landlord, and that these repairs were not completed during the tenancy. The Tenants stated that despite their repeated requests to have the washing machine fixed, it continued to spark dangerously every time they used it and they required a chop-stick to select the cycle as the dial is broken. In support of their testimony the Tenants provided a video of the sparks that occurred when they turned the dial on the washing machine in order to use it. The Tenants stated that the issue occurred in July and August of 2018 and therefore sought a rent reduction in the amount of \$60.00 for each of those months. While the Landlord acknowledged that the cycle selection dial was broken and was not repaired, he argued that the washing machine was still technically functional and therefore the Tenants are not entitled to any rent reduction for July or August.

The parties also agreed that there were several serious leaks in the rental unit, which is located in a multi-story, multi-unit building, beginning November 16, 2017. It was agreed that these leaks were the result of issues with the building envelope and common property of the strata. There was no dispute between the parties that the leaks were significant and that significant repairs were required in several areas of the rental unit as a result, including but not limited to the removal of water, the removal and replacement of flooring, the removal and replacement of drywall and insulation, mold remediation,

and the cutting of a hole in the exterior wall of the rental unit. The parties also agreed that the impacted drywall remained unrepaired until July 11, 2018, and that impacted flooring remained unrepaired until the end of the tenancy in August of 2018. While the parties agree that a \$500.00 rent reduction was provided to the Tenants by the Landlord in November 2017, in relation to these leaks and repairs and that a further \$300.00 per month rent reduction was provided every month thereafter until the end of the tenancy, the parties disputed whether this compensation was sufficient. While both parties provided significant testimony over the course of two separate hearings, only the relevant testimony of the parties has been summarized below.

The Tenants testified that the above noted compensation was insufficient based on the duration of the repairs, the impact the leaks and the subsequent repairs had on their use and quiet enjoyment of the rental unit, and the Landlord's failure to have the repairs completed in a timely manner. As a result the Tenants sought a further rent reduction up to 100% of their \$1,050.00 rent from November of 2017 until the end of their tenancy in August of 2018. Although the Tenants stated that they are seeking a 100% rent reduction for November 2017 – August 2018 as the rental unit was unliveable; they acknowledged when asked that they and their three dependent children resided in the rental unit as their only residence during the above noted time period. Despite the foregoing, the Tenants stated that the leaks impacted the flooring and drywall in one bedroom, the living room, and the dining room, and that the leaks and subsequent repairs significantly impacted their use and enjoyment of the rental unit as they were required to sleep as a five person family unit in one bedroom, the rental unit lacked flooring and drywall in numerous areas over a great length of time, there was an ant and spider infestation for two weeks due to the repairs required to the exterior of the building envelope, there was flooding every time it rained, and that there was mold in the rental unit which the Landlords failed to adequately address. In support of their testimony the Tenants submitted a self-authored timeline of events, a one page letter to the Landlord dated June 10, 2018, two short videos and several photographs showing some of the damage to the rental unit.

In response the Landlord argued that the rental unit was clearly not uninhabitable as the Tenants and their children resided in the rental unit during the leaks and for 10 months thereafter, that the Tenants have greatly exaggerated the extent of the damage caused by the leaks and the duration of the repairs required to address these leaks, that the strata is primarily responsible for completing the repairs as the leaks originated in common property, that they have always acted reasonably to assist the strata in

completing these repairs in a timely manner, that they have repaired issues that were not the responsibility of the strata in a reasonable timeframe, and that the Tenants have already been fairly compensated with rent reductions. In addition to the above, the Landlord stated that they did not increase the rent during the 7 year tenancy and therefore the Tenants were already paying well below market rent which was then further reduced. As a result, the Landlord stated that they should not be entitled to any further rent reduction. In support of their testimony the Landlord provided a one page written submission, several photographs showing some of the damage to the rental unit, and four pages of documentation from the restoration company hired to complete the repairs by the strata.

In addition to the above, the Tenants also sought \$65.88 in compensation for increased electricity costs due to the use of power tools in the rental unit by workers completing repairs and increased heating bills due to the lack of drywall and insulation. In support of this claim the Tenants submitted copies of their utility bills. During the hearing the Landlord agreed that the Tenants are entitled to a one-time rent reduction in the amount sought in compensation for this increased utility amount.

Although testimony was also provided by both parties in relation to the dishwasher, ultimately the Tenant's acknowledged that they are no longer seeking any compensation from the Landlord in relation to the dishwasher.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*, and use of common areas for reasonable and lawful purposes, free from significant interference. However, section 32 of the *Act* states that a landlord must provide and maintain the 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.

In assessing the Tenants' claim for an additional rent reduction of \$550.00 for November of 2017, and \$750.00 per month for December 2017 – August 2018, I therefore find that I must balance the Tenants' right to exclusive use and quiet enjoyment of the rental unit under section 28 with the Landlord's obligations to repair and maintain the rental unit under section 32.

While the parties provided significant and opposing affirmed testimony regarding the extent of damage to the rental unit, the length of the repairs, the habitability of the rental unit, and the cause of any delays in the completion of the repairs, the Tenants only submitted a self-authored timeline of events, a one page letter to the Landlord dated June 10, 2018, two very short videos of the rental unit, and several photographs in support of their testimony that they are entitled to additional rent reductions on top of the \$500.00 rent reduction already provided for November of 2017 and the \$300.00 per month reduction already provided from December 2017 until the end of their tenancy in August of 2018.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. While I agree that leaking occurred in the rental unit resulting in various and not insignificant inconveniences to the Tenants over a period of 9-10 months, the Landlord argued that the Tenants should not be entitled to any additional compensation as they have already been fairly compensated by way of the rent reductions. Based on the conflicting testimony of the parties and the lack of corroborating evidence before me for consideration from the Tenants in support of their testimony that they are entitled to additional rent reductions on top of those already provided, ultimately I find that the Tenants have failed to satisfy me, on a balance of probabilities, that the extent and duration of the repairs and any loss of use or quiet enjoyment caused by them entitles them to any further rent reductions. As a result, I dismiss the Tenants' claims for additional rent reductions due to the leaks in the rental unit and the subsequent repairs, or lack thereof, without leave to reapply.

Having made this finding, I will now turn my mind to the Tenants' claim for a rent reduction due to an improperly functioning washing machine. The parties agreed that the Tenants were entitled to use of a washing machine in the rental unit under the tenancy agreement, that there was an issue with the functionality of the dial on the

washing machine which the Tenants brought promptly to the attention of the Landlord, that the Landlord was aware of this issue, and that the issue was never resolved. While I agree with the Landlord that the washing machine remained technically functional during July and August of 2018, I find the video evidence from the Tenants regarding the sparks created when using the dial compelling. As a result, and despite the fact that the washing machine was still technically functional, I find that the washing machine did not function correctly and that the Tenants therefore suffered a loss in the value of their tenancy for which they have not yet been compensated by the Landlord.

Although I am satisfied, based on the above, that this loss is a result of the Landlord's failure to repair the washing machine as required under the *Act* and the tenancy agreement and that the Tenants acted reasonably to minimize this loss, I am not satisfied that the Tenants have proven the amount or value of this loss. Although the Tenants sought a rent reduction in the amount of \$60.00 per month, they have not provided any documentary or other evidence to support that this is an accurate value of their loss, especially given the fact that they continued to use the washing machine during this time. As a result, and pursuant to Policy Guideline #16, I therefore award only a nominal rent reduction of \$5.00 per month for July and August of 2018 in relation to the washing machine as I am satisfied that the Landlord breached the *Act* but I am not satisfied by the Tenants that any significant loss has either occurred or been proven as a result of this breach.

During the hearing the parties also agreed that the Tenants are entitled to a one-time rent reduction of \$65.88 for amounts spent on increased utilities as a result of the repairs in the rental unit. As a result, I therefore grant the Tenants' claim for this amount.

As the Tenants were largely unsuccessful in their claims, I decline to grant recovery of the filing fee. Based on the above and pursuant to section 67 of the *Act*, I find that the Tenants are therefore entitled to a Monetary Order in the amount of \$75.88.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of \$75.88. The Tenants are provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 23, 2018

Residential Tenancy Branch