



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, RP, RR

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution, filed on December 6, 2019, in which the Tenants sought the following relief:

- an Order that the Landlord make repairs to the rental unit;
- an Order for monetary compensation from the Landlord;
- an Order that the Tenants be permitted to reduce their rent for the cost of repairs; and,
- recovery of the filing fee.

The hearing of the Tenants Application was scheduled for February 3, 2020. The hearing did not complete and was adjourned to April 17, 2020. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was assisted by her son, G.S., who provided testimony and submissions on behalf of the Landlord.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Landlord's Application concluded on April 17, 2020. This Decision was rendered on May 20, 2020. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Are the Tenants entitled to an Order that the Landlord make repairs to the rental unit?
2. Are the Tenants entitled to monetary compensation from the Landlord?
3. Should the Tenants be permitted to reduce their rent for the cost of repairs?
4. Should the Tenants recover of the filing fee?

Background and Evidence

The Tenant, R.H., testified that the tenancy began August 1, 2018. Monthly rent was \$2,850.00 when the tenancy began and is currently \$2,924.00.

The Tenants seek an Order that the Landlord make the following repairs:

- repairs to the dishwasher;
- repairs to the living room window;
- repairs to the washing machine;
- repairs to the garage door; and,
- mould removal in the master bedroom bathroom.

R.H. testified that the door panel is coming off the dishwasher and is causing it to leak. She stated that they first reported this to the Landlord in 2018 shortly after they moved in. She stated that after every wash there is water left in the dishwasher and although she has cleaned out the filter it makes no difference. R.H. also stated that there is water under the sink which she believes originates from the dishwasher. R.H. estimated that the dishwasher is well over ten years old and likely requires replacement.

R.H. further stated that the Landlord brought in someone to look at the dishwasher before Christmas 2019; this person was supposed to call her in January but had not done so as of the date of the second hearing.

In terms of the living room window, R.H. stated that the window leaks into the rental unit and is damaging the wood window sill. Photos submitted by the Tenants depict water between the two glass panes as well as the damaged window sill.

In terms of the clothes washing machine, R.H. stated that it does not work consistently. She stated that it “codes” and locks her clothes in there, even when it is unplugged. She stated that almost every time she does her laundry, she receives a different error code. R.H. stated that she first brought this to the Landlord’s attention on October 28, 2019. The Tenants provided evidence of text communication between the parties wherein the Tenants raised this issue with the Landlord and also provided photos of the error codes received.

R.H. confirmed that the Landlord has had people come to the rental unit to fix the washing machine, yet it still does not work. She estimated that the washing machine was about the same age as the dishwasher and likely needs replacement.

R.H. stated that there are two full bathrooms and one half bathroom at the rental unit. The jacuzzi tub is in the main bathroom but the motor is in the master bedroom bathroom. She stated that due to a leak in the jacuzzi bathtub, as well as a hole under the sink in the master bathroom the jacuzzi cannot be used as it leaks under the sink. She further stated that they are not able to use the jacuzzi tub, although they can use it as a shower. The Tenant stated that she believes that there is water going under the jacuzzi tub.

R.H. further testified that she smelled mould when she first moved in and discovered the leak. In response, the Landlord came and glued a plunger to where the jacuzzi jet was and “pushed another jet in”. Later the Landlord sealed the jet with a piece of cardboard and duct tape; this as confirmed in photos submitted in evidence by the Tenants.

The Tenants expressed their concerns to the Landlord regarding the presence of mould in the rental unit, but the Landlord failed to take any remedial steps. R.H. testified that the Landlord told them to get an inspection if they were concerned.

The Tenants obtained a Mould Inspection Report, a copy of which was provided in evidence and which provided the following relevant recommendations:

- removal of the tile in the master bathroom shower wall to address the high moisture readings in that area and to address possible hidden fungal infestation within those wall cavities;
- the use of two de-humidifiers in the kitchen and bedroom;
- checking the caulking/grouting in all bathrooms and remedy as required;
- as general maintenance, the Tenants should spray and wipe all windows, window sills and sliding doors every 2 months with 3% Hydrogen Peroxide.
- repairing the roof leaks “without delay” to prevent further leaks from occurring in the living room area and mould growth.

The Tenant seeks an Order that the Landlord take the recommended steps outlined in the Mould report and reimburse the Tenants for the cost of the report in the amount of \$493.75.

The Tenant stated that the Landlord had someone come in two days before Christmas to deal with the bathroom. She noted that they came in and took out two rows of tiles. She says they were supposed to let the walls dry, but they did not let it dry before replacing them. She claimed that they still smell mould even though the tiles have been replaced. The Tenant stated that she then found more mould in the closet in the bathroom.

The Tenant confirmed that they consistently run the fan in the bathroom as well as running a dehumidifier since the beginning of November 2019 such that they are doing all they can to address this.

In response to the Tenants' claims, the Landlord's son, G.S., testified as follows.

G.S. estimated that the washing machine is approximately 10 years old. He stated that the dishwasher is also 10 years old.

G.S. stated that the dishwasher is working perfectly fine and does not leak. He stated that he has been there and the front panel was a cosmetic issue because the repairman forgot to put in a screw.

G.S. further stated that the clothes washing machine has "had some issues", however he claimed the washing machine works fine when he is there. He claimed that there are no issues of it locking.

In terms of the leaking window G.S. stated that he was notified of the leak in October 2019 and he attended immediately. He claimed that the gutter was not cleaned by the Tenants and the water was going through the window. He stated once the gutters were cleaned no water was coming into the house. He further stated that once the gutters were cleared he hasn't hear anything of the water, noting that it has been raining significantly since.

In terms of the mould issues, G.S. confirmed it is the Landlord's position that there was no mould as noted in the report. G.S. also noted that they removed the tiles as directed and there was no mould.

In terms of the hole under the sink for the jacuzzi, the Landlord claimed he never received the Tenant's photos. He then stated that the photos with the duct tape were "taken a considerable time ago".

At the conclusion of the first hearing, the Tenant R.R. stated that he wanted to testify. As the time set aside for the hearing had expired, I adjourned the matter to allow R.R. to provide testimony in support of the Tenant's' claims.

When the hearing reconvened April 17, 2020, the Tenant R.R. testified as follows. He stated that the Landlord bought the property in June and then rented it out right away in July. R.R. submitted that the Landlord may not have been aware of the condition of the rental unit, nor did he believe the Landlord fully inspected the property prior renting it out, and as such did not realize the extent of the problems.

At the continuation of the hearing, G.S. confirmed that the clothes washing machine was replaced in February 2020, after the first hearing.

In terms of the Tenants' request for repairs to the dishwasher, G.S. stated that the Landlord has ordered a new dishwasher but it has not yet arrived due to Covid-19.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

The Tenants seek an Order that the Landlord make the following repairs:

- repairs to the dishwasher;
- repairs to the washing machine;
- repairs to the living room window;
- repairs to the garage door; and,
- mould removal in the master bedroom bathroom.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The Landlord's son testified that the washing machine and dishwasher were approximately 10 years old. The Tenants claim these items are at least 10 years old.

As discussed during the hearing, *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* provides that a clothes washing machine has a useful life of 15 year and a dishwasher has a life span of 10 years. While I was not provided with the proof of purchase date, I am satisfied these appliances are at minimum 10 years old. I find it likely they have reached their useful building life.

As noted, when the hearing reconvened on April 17, 2020, the Landlord's son confirmed the clothes washing machine had been replaced. The Landlord's son stated that the Landlord had also ordered a new dishwasher. This was not disputed by the Tenant. I therefore find these matters have been resolved.

The Tenants also sought an order that the Landlord repair the window in the living room. The Landlord alleged the Tenants have not cleared the gutters and this has caused water ingress. The Mould Inspection Report indicates the moisture may originate from a leak in the roof and the Report writer recommended that the roof leaks be repaired "without delay". I am satisfied that the Landlord should be ordered, pursuant to sections 32 and 62 of the *Act*, to address these issues. I therefore Order as follows:

- 1. By no later than June 30, 2020, the Landlord shall obtain the services of a qualified window installer to inspect the window in the living room. The Landlord shall request that the window installer provide recommendations as to whether the window can be repaired or should be replaced. In any case, the Landlord shall either repair or replace the window (as recommended) by no later than July 31, 2020.**
- 2. By no later than June 15, 2020, the Landlord shall obtain the services of a qualified roofing repairperson to inspect the possible leak in the roof and make repairs to the roof as recommended by the repairperson.**

In their Application, the Tenants alleged rodents were entering the rental unit through a gap at the bottom of the garage door. They did not provide any submissions in this regard. **I therefore dismiss this portion of their claim.**

The Tenants also seek an Order that the Landlord attend to mould remediation. The Mould Inspection Report did not indicate the presence of visible mould. The Report writer recommended that the Landlord attend to the following:

- removal of the tile in the master bathroom shower wall to address the high moisture readings in that area and to address possible hidden fungal infestation within those wall cavities;
- the use of two de-humidifiers in the kitchen and bedroom;
- Checking the caulking/grouting in all bathrooms and remedy as required;

I am satisfied the Landlord repaired the bathroom shower tiles as recommended. I am not satisfied the installer failed to let the area dry prior to reinstallation as doing so would affect the adherence of the tiles.

The Tenant testified that she has been using a dehumidifier and fan regularly. I am therefore satisfied the Landlord has complied with the Report writer's recommendation that dehumidifiers be used in the rental unit. In the abundance of caution, I Order as follows:

- 3. Should the Tenant have access to only one dehumidifier, the Landlord shall, by no later than June 30, 2020, provide a second to the Tenants, to**

ensure they have one in the kitchen and one in the bathroom area as recommended by the Mould Inspection Report.

I am satisfied, based on the Tenants' testimony as well as the photos submitted in evidence by the Tenants that the jacuzzi tub does not work, and when previously in use leaked. I am also satisfied that the Landlord's attempted repairs have been unsatisfactory. I find that the Tenants are entitled to use the jacuzzi tub or receive a corresponding rent reduction should this tub not be repairable. I therefore order as follows:

- 4. By No later than June 15, 2020, the Landlord shall obtain the services of a qualified jetted tub repair person to inspect the jacuzzi tub and provide recommendations as to its repair.**
- 5. By no later than June 30, 2020 the Landlord shall attend to the recommended repairs to the jacuzzi tub.**
- 6. Should the Landlord not make these repairs, the Tenants shall be permitted to reduce their monthly rent by \$50.00 as compensation for the loss of this facility.**

The Report writer also recommended that the Tenants spray and wipe all windows, window sills and sliding doors every 2 months with 3% Hydrogen Peroxide. The Tenants failed to provide any testimony with respect to this recommendation. Such preventative maintenance will reduce the presence of mould and inhibit its growth. The Tenants are cautioned that they must also follow this recommendation to address any moisture/mould issues in the rental unit.

The Tenants also seek monetary compensation from the Landlord.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I find the Tenants are entitled to recovery of the amounts paid for the mould inspection and the corresponding report. I am satisfied that the moisture levels in the rental unit were such that the mould inspection was required.

I therefore award the Tenants the **\$493.75** claimed for the cost of the inspection.

On their Application the Tenants indicated they also seek the sum of \$800.00 for the following:

The master Bathroom is unusable, because of mould, the living room window is leaking from leaks in the roof. Washing machine not working consistently (wasting water, for which I pay), this is also creating much stress and anxiety. Dish washer not working Consistently. Garage door has large gaps allowing rodents to come in, also cold air - Heat loss.

I have made orders with respect to the jacuzzi tub; however, I am not satisfied the master bathroom has been rendered unusable as the Tenants confirmed they are able to shower in that room.

I am satisfied the Tenants have been attempting to address issues with respect to the roof leak, the window leak, the clothes washing machine, and the dishwasher with the Landlord for some time. I find this has impacted their enjoyment of the rental unit and the value of their tenancy. I therefore award them the nominal sum of **\$200.00** as compensation for the devaluation in their tenancy.

As the Tenants have been substantially successful in their Application, I award them recovery of the \$100.00 filing fee for a total of **\$793.75**. Pursuant to section 72(2)(b) I authorize the Tenants to reduce their June 2020 rent by \$793.75 as recovery of this amount.

Conclusion

The Tenants Application for an Order that the Landlord make repairs to the rental unit is granted in part and in accordance with the specific Orders made in this my Decision as follows:

- 1. By no later than June 30, 2020, the Landlord shall obtain the services of a qualified window installer to inspect the window in the living room. The Landlord shall request that the window installer provide recommendations as to whether the window can be repaired or should be replaced. In any case, the Landlord shall either repair or replace the window by no later than July 31, 2020.**
- 2. By no later than June 15, 2020, the Landlord shall obtain the services of a qualified roofing repairperson to inspect the possible leak in the roof and make repairs to the roof as recommended by the repairperson.**
- 3. Should the Tenant have access to only one dehumidifier, the Landlord shall, by no later than June 30, 2020, provide a second to the Tenants, to ensure they have one in the kitchen and one in the bathroom area as recommended by the Mould Inspection Report.**
- 4. By No later than June 15, 2020, the Landlord shall obtain the services of a qualified jetted tub repair person to inspect the jacuzzi tub and provide recommendations as to its repair.**
- 5. By no later than June 30, 2020 the Landlord shall attend to the recommended repairs to the jacuzzi tub.**
- 6. Should the Landlord not make these repairs, the Tenants shall be permitted to reduce their monthly rent by \$50.00 as compensation for the loss of this facility.**

The Tenants' request for an Order that the Landlord repair the garage door is dismissed.

The Tenants' Application for monetary compensation from the Landlord is granted in part. The Tenants are entitled to the sum of **\$793.75**, which they may recover by reducing their June 2020 rent by this sum.

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 20, 2020

Residential Tenancy Branch