Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maple Leaf Property Management Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") on April 25, 2020. The Tenants applied for an order for regular repairs, an order to reduce the rent for repairs, services or facilities agreed upon but not provided, and for recovery of their $100.00 Application filing fee.

The Tenants, C.C. and A.M., and an agent for the Landlord, C.S. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony.

This hearing was originally scheduled for June 5, 2020, but at the onset of the hearing, it was determined that the Tenants had not served the Landlord with their documentary evidence with enough time for the Agent to review it. Accordingly, the hearing was adjourned to give the Agent this opportunity.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure "(Rules)"; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

In the reconvened hearing, neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The Agent said that the person identified by the Tenants as the Landlord is a building caretaker. The Agent advised me of the property management company representing the owner; therefore, I amended the Respondent's name in the Application and the style of cause, as such, and pursuant to section 64(3)(c) and Rule 4.2.

The Parties provided their email addresses in the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

While instructing the Parties about the hearing, I advised them that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing, although, I have reviewed and considered more than they presented in the hearing.

Issue(s) to be Decided

- Are the Tenants entitled to an order for regular repairs, and if so, what repairs is the Landlord required to make?
- Are the Tenants entitled to an Order to reduce the rent for repairs, services or facilities agreed upon but not provided, and if so, in what amount?
- Are the Tenants entitled to the recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began on April 15, 2020, running to April 30, 2021, at which time it operates on a month-to-month basis. They agreed that the Tenants pay the Landlord a monthly rent of $2,065.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of $1,032.50, and a pet damage deposit of $1,032.50.

The Tenants testified that when they applied for the rental unit, they were told that it would be renovated prior to the start of their tenancy on April 15, 2020. On their Notice of Dispute Resolution Proceeding, the Tenants said that they want their rent reduced by $500.00 per month "…until the upgrades discussed at the time of signing the [tenancy] agreement are completed. We [were] told that upgrades would be completed by our

move in date, April 15, 2020. Only one of the upgrades was completed (paint)."

The Tenants submitted a monetary order worksheet setting out their monetary claim:

	Receipt/Estimate From	For	Amount
1	New tile flooring	Kitchen & bathroom	$100.00/mth
2	New Light Fixtures & Mirror	Bathroom	$100.00/mth
3	New counter tops	Kitchen & bathroom	$100.00/mth
4	Paint - completed	Whole unit	$0.00/mth
5	Floor refinishing	Whole unit	$100.00/mth
6	Stainless steel appliances	Kitchen	$100.00/mth
		Total monetary order claim	$500.00/Mth

The Tenants applied for an order for regular repairs. They said this means an order to have the renovations completed, as promised. The Tenants also seek a rent reduction for as long as the renovations are not completed of $100.00 per month, per item, for as long as each item is not provided.

The Agent questioned the timing of the promise of renovations. She indicated that the Tenants signed the tenancy agreement prior to being advised about the renovations. The Agent testified that the rent they are paying is the same as it was for the previous tenant in that unit. She said that leaving the rent the same is inconsistent with an investment of approximately $5,800.00 in renovations for the unit. The Agent said that she, as Senior Property Manager, is responsible for approving rental applications and arranging for renovations. The Agent said: "I wouldn't have approved the same rent with $5,800.00 of renos being done."

She said that there was no mention in her correspondence with the leasing agent, C.L. ("Leasing Agent"), that renovations would be done to the rental unit in question.

The Parties submitted emails that were exchanged between themselves, and between the Tenants and the RTB, as a means of supporting their respective positions.

I find that the issue before me revolves around what the Tenants were promised by an authorized agent of the Landlord. Further, I must determine at what point before or after

the tenancy agreement was signed that this promise occurred.

The Agent directed my attention to email correspondence between the Agent and the Leasing Agent about the Tenants' application for tenancy in the residential property. The email covers such topics as the Tenants' credit scores, income, and employment and tenancy references. There is no mention of renovations in these emails, in which the Leasing Agent sought approval for the Tenants' application from the Agent.

The Tenants submitted a copy of the tenancy agreement in their evidence; however, they did not indicate, and I did not find any reference to renovations to the rental unit in that agreement, which constitutes the contract between the Parties. The execution portion of the tenancy agreement is dated March 19, 2020.

The Tenants' second submission contains an email they received from the Leasing Agent dated March 20, 2020, in which she congratulates them on having finalized their new rental unit, and saying:

> I wanted to follow up on the renovations I discussed with [C.C.] today. The following items will be completed before you move in on April 15:
>
> 1. Tile in the Kitchen and Bath
> 2. Light Fixture and Mirror in the Bathroom
> 3. New counters in kitchen and bath
> 4. Paint
> 5. Floor Refinishing
> 6. Stainless Steel Appliances
>
> Please let me know if you have any questions or if I can be of any further assistance.
>
> All the Best,
> [C.L.] | Residential Leasing and Marketing Specialist

The Agent said that despite the cost of renovating and the rent not increasing from what the previous tenant paid, the Landlord is doing the renovations as a sign of good faith.

The Tenants said that they asked the RTB about this situation. The Tenants said: "The response we got was 'Covid or no Covid, you have a signed contract'." The Tenants said:

> We were only given two weeks' notice that we were going to be done. They were pushing us into an apartment we didn't want or on the street. They then advised that it couldn't be done. We were offered another renovated suite on the fourth floor. 'We would have transferred you back', they say. But in an email, it was another unit. Another unit on the 18th floor may never have come up.

The Agent said:

> We are doing the renovations. We shouldn't have to back pay with Covid, since we couldn't have done them [in April]. They are being completed. The hard wood flooring, there's nothing we can do about.

The Agent noted the Tenants' evidence of an email to them from the Leasing Agent dated April 9, 2020. In this email, the Leasing Agent said:

> Thank you for your email. We understand your frustration. It was not our intent to make the moving process more stressful.
>
> As I am sure you can appreciate, COVID 19 has made normal situations extraordinary. Rules and regulations surrounding COVID 19 become more complicated daily and could span months before resuming to normal. Currently, our contractors are working in an emergency capacity. In the state of emergency, and with all of the unknowns, we cannot rightfully commit to having renovations completed in any time frame.
>
> Once a tenant moves in, it is impossible to complete upgrades such as flooring. All personal possessions need to be removed and the floor cannot be walked on for 48+ hours.
>
> We are happy to provide you with one of the following solutions;
>
> Move into [the rental unit] on April 15, 2020, in as-is condition.
>
> - If a renovated unit becomes available during your original lease term, we will offer you this unit at market rent.
>
> End your tenancy & issue a full deposit refund.
>
> We hope that we can move forward to build an amicable relationship during this difficult time.
>
> [Leasing Agent] | Residential Leasing and Marketing Specialist

The Tenants said: “This leaves me two weeks . . . you made your agreement ahead of time when I signed the contract.”

The Parties agreed that the renovations started in the rental unit on July 6, 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, claimants must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

I find that the renovations listed in the monetary order worksheet consist of cosmetic changes or upgrades, rather than repairs or regular maintenance. I find that the Tenants’ claim is based on their assertion of a contractual right to have their 18th floor rental unit renovated. However, I find that there is nothing in the tenancy agreement about these renovations. Based on the evidence before me, I find that their claim is grounded in and limited to discussions they had with the Leasing Agent and her March 20, 2020 email to them, which summarizes the renovations discussed that day. This email was dated the day after the Tenants signed the tenancy agreement.

The parol evidence rule is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract. I find that the tenancy agreement is the contract between the Parties. The renovations were promised by a representative of the Landlord, and the Agent has committed to fulfilling that promise, as best as possible, despite it not being in the tenancy agreement.

Further, I find that the Leasing Agent’s email implies that March 20, 2020 was the first time the Parties discussed the possibility of renovations to the rental unit. In addition, the date of the email is two days after the Province declared the state of emergency on March 18, 2020. I find this indicates that the Leasing Agent, among others in the Province, was unaware of the implications of the Covid-19-based state of emergency when she discussed renovations with the Tenants on March 20, 2020.

I find that the promised renovations were affected by the spread of Covid-19 and the state of emergency that resulted. I find it to be common knowledge that most industries were affected by this state of emergency, including contractors and trades. Despite this, I find that the Landlord has taken steps to have the renovations done as soon as possible, before a possible second wave of Covid-19 shuts industries down again.

The Tenants applied for dispute resolution on April 25, 2020, while the state of emergency was in place. I find they were and are being unreasonable in their expectations of the Landlord in this situation. In contrast, I find that the Landlord has done their best to complete the renovations, despite there being no legal requirement that they do so under the tenancy agreement.

I find it more likely than not that the Tenants will benefit from renovations, despite paying the same rent as the previous tenant. I find that the Tenants have not demonstrated a basis on which their claim can be successful. I find that the Tenants have provided insufficient evidence to meet their burden of proof in this matter. Accordingly, I dismiss the Tenants' Application wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Tenants are unsuccessful in their Application. They did not provide sufficient evidence to support their burden of proof on a balance of probabilities. The Tenants' Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 23, 2020

Residential Tenancy Branch