Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KIRK WEST 43 HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, PSF, RP, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65;
- an order requiring the landlord to perform repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's three agents, landlord AL ("landlord"), "landlord SK" and "landlord TC," and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 42 minutes.

The landlord confirmed that he was the general manager, landlord SK confirmed that he was the building manager, and landlord TC confirmed that he was the previous building manager, all employed by the landlord company named in this application. The landlord confirmed that he, landlord SK and landlord TC all had permission to represent the landlord company named in this application. The male tenant confirmed that he had permission to represent the female tenant at this hearing, as she did not testify.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord confirmed that no evidence was submitted by the landlord for this hearing.

Settlement of Some Issues

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. The landlord agreed to pay the tenants $200.00 total, which includes $100.00 for this application filing fee and $100.00 for a labour cost for a mouse issue at the rental unit, according to the following terms:
    a. A rent reduction of $200.00 will be enforced for November 2020 rent;
    b. The tenants will issue a new rent cheque of $1,149.00 to the landlord, which includes a $200.00 rent reduction for November 2020 rent;
    c. The landlord will return the tenants' old rent cheque of $1,349.00 to the tenants;
    d. Both parties will meet at 11:00 a.m. on November 5, 2020, to exchange the above old and new rent cheques;
2. The tenants agreed that this settlement agreement constitutes a final and binding resolution of a portion of their application at this hearing, except for the repair, services and facilities issues.

I made a decision regarding the remainder of the tenants' application because the parties were unable to reach a settlement on those issues.

Issues to be Decided

Are the tenants entitled to an order requiring the landlord to provide services or facilities required by law?

Are the tenants entitled to an order requiring the landlord to perform repairs to the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 15, 2015. Monthly rent in the amount of $1,349.00 is payable on the first day of each month. A security deposit of $610.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The tenants seek repairs by the landlord, to one front window and the dishwasher at the rental unit. The tenants also seek access from the landlord, to a common area rooftop patio and balcony.

The tenant stated the following facts. The one front window at the rental unit has a chip and crack that has extended across the entire window. The tenants require the landlord to repair this window. The tenants did not cause this damage. The entry point of the hole is from outside and appears to be from air soft pellets or a BB gun. The tenants told the landlord about the issue on May 10, 2020 and when no response was received, a follow up request was made on June 5, 2020.

The landlord disputes the tenants' repair order for the front window at the rental unit. The landlord stated that he offered to split the cost of the front window repair with the tenants 50/50 but they refused. He claimed that he was told by landlord SK that the tenants caused a hole to the window from inside the rental unit, as they have a small child. Landlord SK stated that the tenant told him about the window crack about half a year ago, it was a small hole and then there was a "spider web" crack that formed around that hole. He agreed that he did not have proof that the tenants caused the damage to the window, but he thinks they did.

The tenant stated the following facts. The dishwasher at the rental unit does not pump water, does not wash dishes, and makes a grinding noise. The tenants have used this dishwasher for five years during their tenancy and it is included in the rent section of their tenancy agreement. They told the landlord about this issue on September 8, 2020 and the landlord responded on September 11, 2020. The tenants require the landlord to repair the dishwasher so they can use it to wash dishes, as it has not been fixed.

The landlord disputes the tenants' repair order for the dishwasher at the rental unit. The landlord claimed that he told his managers to tell all the tenants in the rental building that he would not repair any dishwashers in the future, if there were any issues, because dishwashers are "not good for the environment."

The tenant stated the following facts. The tenants require access to the rooftop patio and balcony that they used for several months earlier in their tenancy. It is a common area that was re-roofed by the landlord. The doors are locked so it is inaccessible by the tenants for the last three years. The tenants want to play with their son and use this area more since he is growing older. The tenants only told the landlord verbally, not in writing, that they wanted access to this area. They agree that it is not included in the rent section 3 of their written tenancy agreement but believe they should have access or receive a rent reduction as per section 7 of their tenancy agreement.

The landlord claimed that he never told any tenants that they could use the rooftop patio and balcony at the rental property. He said that approximately three to four years ago, he had the rooftop repaired, the railings were removed, it is not a living space, and he requested his managers to lock up the area, since it is dangerous, and tenants can fall three storeys. He explained that it is not part of the tenancy agreement, it was only an amenity while it was working. Landlord SK claimed that he did not formally tell the tenants but verbally advised them when they asked about the rooftop, that it could not be used and was locked.

Analysis

Section 32 of the *Act* states the following:

> *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.

On a balance of probabilities and for the reasons stated below, I make the following findings regarding the remainder of the tenants' application.

I find that the tenants did not cause the damage to the front window at the rental unit. I find that the landlord provided insufficient evidence that the tenants caused this damage wilfully or negligently. The landlord suspects that the tenants caused the damage, but the tenants deny same, and indicated that the entry point came from the outside, which I accept. It is the landlord's responsibility to make repairs to the rental unit, unless it is caused wilfully or negligently by the tenants. The landlord is required, as per section 32 of the *Act* above, to maintain the rental unit in a state of decoration and repair so that it is suitable for occupation by the tenants and complies with health, safety and housing standards required by law. A front window is a safety and access issue for the tenants.

Therefore, I order the landlord, at its own cost, to have a certified, licensed professional inspect by November 13, 2020, and repair by November 20, 2020, the one chipped and cracked window at the front of the rental unit, so it is in proper, working order. I order the tenants to provide access to the rental unit for the above inspection and repair, in accordance with section 29 of the *Act*.

I find that the tenants did not cause damage to the dishwasher at the rental unit. I find that the landlord provided insufficient evidence that the tenants caused this damage wilfully or negligently. It is the landlord's responsibility to make repairs to the rental unit, unless it is caused wilfully or negligently by the tenants. The landlord is required, as per section 32 of the *Act* above, to maintain the rental unit in a state of decoration and repair so that it is suitable for occupation by the tenants and complies with health, safety and housing standards required by law. The dishwasher is included in the rent section of the parties' written tenancy agreement. I find that the landlord's reasoning to not fix the dishwasher because they are "not good for the environment," is not a reasonable reason to refuse fixing it, since it has been included since the beginning of the tenancy and was used by the tenants for five years until they informed the landlord of the issue on September 8, 2020.

Therefore, I order the landlord, at its own cost, to have a certified, licensed professional inspect by November 20, 2020, and repair by December 4, 2020, the dishwasher at the rental unit, so it is in proper, working order. I order the tenants to provide access to the rental unit for the above inspection and repair, in accordance with section 29 of the *Act*.

I dismiss the tenants' application for access to the rooftop patio and balcony and a rent reduction for loss of this space, without leave to reapply. This common area was not included in the rent or as a service or facility in the parties' written tenancy agreement, as per sections 3 and 7 of the agreement. Although the tenants used this area at the beginning of their tenancy, it has been removed for at least the last three years, and the tenants did not file an application earlier for it. The tenants previously used this area at the courtesy of the landlord, and I find they are not entitled to a rent reduction for this area, as it is not part of their rent. This area is no longer safe for public use, as it has no safety railings.

Conclusion

I order the landlord to complete inspections and repairs to the rental unit and for the tenants to provide access to the rental unit for the above inspections and repairs, as noted above and in accordance with section 29 of the *Act*.

I order that the tenants are entitled to a rent reduction of $200.00 for November 2020 rent, and I order that they pay the landlord $1,149.00 for this rent, by November 5, 2020.

The tenants' application for access to the rooftop patio and balcony and a rent reduction for loss of this space, is dismissed without leave to reapply.

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 05, 2020

Residential Tenancy Branch